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PART II — Section 2

प्राधिकार से प्रकाशित

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Bills were introduced in Lok Sabha on 27th December, 2011.

BILL No. 133 OF 2011

A Bill further to amend the Prevention of Money-laundering Act, 2002.

BE it enacted by Parliament in the Sixty-second Year of the Republic of India as follows:—

1. (1) This Act may be called the Prevention of Money-Laundering (Amendment) Act, 2011.

Short title
and
commence-
ment.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

15 of 2003.

2. In section 2 of the Prevention of Money-Laundering Act, 2002 (hereinafter referred to as the principal Act), in sub-section (1),—

Amendment
of section 2.

(i) after clause (f), the following clause shall be inserted, namely:—

‘(fa) “beneficial owner” means an individual who ultimately owns or controls a client of a reporting entity or the person on whose behalf a transaction is being conducted and includes a person who exercises ultimate effective control over a juridical person;’;

(ii) after clause (h), the following clause shall be inserted, namely:—

‘(ha) “client” means a person who is engaged in a financial transaction or activity with a reporting entity and includes a person on whose behalf the person who engaged in the transaction or activity, is acting;’;

(iii) after clause (i), the following clauses shall be inserted, namely:—

‘(ia) “corresponding law” means any law of any foreign country corresponding to any of the provisions of this Act or dealing with offences in that country corresponding to any of the scheduled offences;

(ib) “dealer” has the same meaning as assigned to it in clause (b) of section 2 of the Central Sales Tax Act, 1956;’;

74 of 1956.

(iv) clause (ja) shall be omitted;

(v) for clause (l), the following clause shall be substituted, namely:—

‘(l) “financial institution” means a financial institution as defined in clause (c) of section 45-I of the Reserve Bank of India Act, 1934 and includes a chit fund company, a housing finance institution, an authorised person, a payment system operator, a non-banking financial company and the Department of Posts in the Government of India;’;

2 of 1934.

(vi) for clause (n), the following clause shall be substituted, namely:—

‘(n) “intermediary” means,—

(i) a stock-broker, sub-broker, share transfer agent, banker to an issue, trustee to a trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser or any other intermediary associated with securities market and registered under section 12 of the Securities and Exchange Board of India Act, 1992; or

15 of 1992.

(ii) an association recognised or registered under the Forward Contracts (Regulation) Act, 1952 or any member of such association; or

74 of 1952.

(iii) intermediary registered by the Pension Fund Regulatory and Development Authority; or

(iv) a recognised stock exchange referred to in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956;’;

42 of 1956.

(vii) in clause (q), the words “and includes a person carrying on designated business or profession” shall be omitted;

(viii) in clause (ra), in sub-clause (i), for the word “remits”, the words “transfers in any manner” shall be substituted;

(ix) after clause (s), the following clauses shall be inserted, namely:—

‘(sa) “person carrying on designated business or profession” means,—

(i) a person carrying on activities for playing games of chance for cash or kind, and includes such activities associated with casino;

(ii) a Registrar or Sub-Registrar appointed under section 6 of the Registration Act, 1908, as may be notified by the Central Government;

16 of 1908.

(iii) real estate agent, as may be notified by the Central Government;

(iv) dealer in precious metals, precious stones and other high value goods, as may be notified by the Central Government;

(v) person engaged in safekeeping and administration of cash and liquid securities on behalf of other persons, as may be notified by the Central Government; or

(vi) person carrying on such other activities as the Central Government may, by notification, so designate, from time to time;

(sb) "precious metal" means gold, silver, platinum, palladium or rhodium or such other metal as may be notified by the Central Government;

(sc) "precious stone" means diamond, emerald, ruby, sapphire or any such other stone as may be notified by the Central Government;';

(x) after clause (v), the following shall be inserted, namely:—

'Explanation.—For the removal of doubts, it is hereby clarified that the term "property" includes property of any kind used in the commission of an offence under this Act or any of the scheduled offences;

(va) "real estate agent" means a real estate agent as defined in clause (88) of section 65 of the Finance Act, 1994;';

(xi) after clause (w), the following clause shall be inserted, namely:—

'(wa) "reporting entity" means a banking company, financial institution, intermediary or a person carrying on a designated business or profession;'

3. In section 3 of the principal Act, for the words "proceeds of crime and projecting", the words "proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming" shall be substituted.

Amendment
of section 3.

4. In section 4 of the principal Act, the words "which may extend to five lakh rupees" shall be omitted.

Amendment
of section 4.

5. In section 5 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:—

Amendment
of section 5.

"(1) Where the Director or any other officer not below the rank of Deputy Director authorised by the Director for the purposes of this section, has reason to believe (the reason for such belief to be recorded in writing), on the basis of material in his possession, that—

(a) any person is in possession of any proceeds of crime;

(b) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this Chapter,

he may, by order in writing, provisionally attach such property for a period not exceeding one hundred and eighty days from the date of the order, in such manner as may be prescribed:

Provided that no such order of attachment shall be made unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973, or a complaint has been filed by a person authorised to investigate the offence mentioned in that Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be, or a similar report or complaint has been made or filed under the corresponding law of any other country:

Provided further that, notwithstanding anything contained in clause (b), any property of any person may be attached under this section if the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section has reason to believe (the reasons for such belief to be recorded in writing), on the basis of material in his possession, that if such property involved in money-laundering is not attached immediately under this Chapter, the non-attachment of the property is likely to frustrate any proceeding under this Act."

6. In section 8 of the principal Act,—

Amendment
of section 8.

(i) in sub-section (1), after the words and figure "section 5, or, seized", the words "or frozen" shall be inserted;

32 of 1994.

2 of 1974.

(ii) in sub-section (3),—

(a) in the opening portion, for the words “record seized under section 17 or section 18 and record a finding to that effect, such attachment or retention of the seized property”, the words “record seized or frozen under section 17 or section 18 and record a finding to that effect, whereupon such attachment or retention or freezing of the seized or frozen property” shall be substituted;

(b) in clause (a), for the words “scheduled offence before a court; and”, the words “offence under this Act before a court or under the corresponding law of any other country, before the competent court of criminal jurisdiction outside India, as the case may be; and” shall be substituted;

(c) for clause (b), the following clause shall be substituted, namely:—

“(b) becomes final after an order of confiscation is passed under sub-section (5) or sub-section (7) of section 8 or section 58B or sub-section (2A) of section 60 by the Adjudicating Authority”;

(iii) in sub-section (4), for the words “possession of the attached property”, the following shall be substituted, namely:—

“possession of the property attached under section 5 or frozen under sub-section (1A) of section 17, in such manner as may be prescribed:

Provided that if it is not practicable to take possession of a property frozen under sub-section (1A) of section 17, the order of confiscation shall have the same effect as if the property had been taken possession of.”;

(iv) for sub-sections (5) and (6), the following sub-sections shall be substituted, namely:—

“(5) Where on conclusion of a trial of an offence under this Act, the Special Court finds that the offence of money-laundering has been committed, it shall order that such property involved in the money-laundering or which has been used for commission of the offence of money-laundering shall stand confiscated to the Central Government.

(6) Where on conclusion of a trial under this Act, the Special Court finds that the offence of money-laundering has not taken place or the property is not involved in money-laundering, it shall order release of such property to the person entitled to receive it.

(7) Where the trial under this Act cannot be conducted by reason of the death of the accused or the accused being declared a proclaimed offender or for any other reason or having commenced but could not be concluded, the Special Court shall, on an application moved by the Director or a person claiming to be entitled to possession of a property in respect of which an order has been passed under sub-section (3) of section 8, pass appropriate orders regarding confiscation or release of the property, as the case may be, involved in the offence of money-laundering after having regard to the material before it.”.

Amendment
of section 9.

7. In section 9 of the principal Act,—

(i) in the opening portion, for the words, brackets and figures “sub-section (6) of section 8”, the words, brackets and figures “sub-section (5) or sub-section (7) of section 8 or section 58B or sub-section (2A) of section 60” shall be substituted;

(ii) in the first proviso,—

(a) for the words “Adjudicating Authority”, the words “Special Court or the Adjudicating Authority, as the case may be,” shall be substituted;

(b) after the words “or seized”, the words “or frozen” shall be inserted.

8. In section 10 of the principal Act, in sub-section (2), for the words, brackets and figures "sub-section (6) of section 8", the words, brackets and figures "sub-section (5) or sub-section (6) or sub-section (7) of section 8 or section 58B or sub-section (2A) of section 60" shall be substituted.

Amendment
of section 10.

9. For section 12 of the principal Act, the following section shall be substituted, namely:—

Substitution
of new
section for
section 12.

"12. (1) Every reporting entity shall—

Reporting
entity to
maintain
records.

(a) maintain a record of all transactions, including information relating to transactions covered under clause (b), in such manner as to enable it to reconstruct individual transactions;

(b) furnish to the Director within such time as may be prescribed, information relating to such transactions, whether attempted or executed, the nature and value of which may be prescribed;

(c) verify the identity of its clients in such manner and subject to such conditions, as may be prescribed;

(d) identify the beneficial owner, if any, of such of its clients, as may be prescribed;

(e) maintain record of documents evidencing identity of its clients and beneficial owners as well as account files and business correspondence relating to its clients.

(2) Every information maintained, furnished or verified, save as otherwise provided under any law for the time being in force, shall be kept confidential.

(3) The records referred to in clause (a) of sub-section (1) shall be maintained for a period of ten years from the date of transaction between a client and the reporting entity.

(4) The records referred to in clause (e) of sub-section (1) shall be maintained for a period of ten years after the business relationship between a client and the reporting entity has ended or the account has been closed, whichever is later.

(5) The Central Government may, by notification, exempt any reporting entity or class of reporting entities from any obligation under this Chapter."

10. After section 12 of the principal Act, the following section shall be inserted, namely:—

Insertion of
new section
12A.

"12A. (1) The Director may call for from any reporting entity any of the records referred to in sub-section (1) of section 12 and any additional information as he considers necessary for the purposes of this Act.

Access to
information.

(2) Every reporting entity shall furnish to the Director such information as may be required by him under sub-section (1) within such time and in such manner as he may specify.

(3) Save as otherwise provided under any law for the time being in force, every information sought by the Director under sub-section (1), shall be kept confidential."

11. In section 13 of the principal Act,—

Amendment
of section 13.

(i) in sub-section (1), for the words "call for records referred to in sub-section (1) of section 12 and may make such inquiry or cause such inquiry to be made, as he thinks fit", the words "make such inquiry or cause such inquiry to be made, as he thinks fit to be necessary, with regard to the obligations of the reporting entity, under this Chapter"

shall be substituted;

(ii) after sub-section (1), the following sub-sections shall be inserted, namely:—

“(1A) If at any stage of inquiry or any other proceedings before him, the Director having regard to the nature and complexity of the case, is of the opinion that it is necessary to do so, he may direct the concerned reporting entity to get its records, as may be specified, audited by an accountant from amongst a panel of accountants, maintained by the Central Government for this purpose.

(1B) The expenses of, and incidental to, any audit under sub-section (1A) may be determined by the Director and shall be paid by the reporting entity and in default of such payment, shall be recoverable from such reporting entity in the manner provided in section 69.”;

(iii) for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) If the Director, in the course of any inquiry, finds that a reporting entity or its designated director on the Board or any of its employees has failed to comply with the obligations under this Chapter, then, without prejudice to any other action that may be taken under any other provisions of this Act, he may—

(a) issue a warning in writing; or

(b) direct such reporting entity or its designated director on the Board or any of its employees, to comply with specific instructions; or

(c) direct such reporting entity or its designated director on the Board or any of its employees, to send reports at such interval as may be prescribed on the measures it is taking; or

(d) by an order, impose a monetary penalty on such reporting entity or its designated director on the Board or any of its employees, which shall not be less than ten thousand rupees but may extend to one lakh rupees for each failure.”;

(iv) after sub-section (3), the following *Explanation* shall be inserted, namely:—

“*Explanation.*— For the purpose of this section, “accountant” shall mean a chartered accountant within the meaning of the Chartered Accountants Act, 1949.”.

38 of 1949.

Substitution of new section for section 14.

12. For section 14 of the principal Act, the following section shall be substituted, namely:—

No civil or criminal proceedings against reporting entity, its directors and employees in certain cases.

“14. Save as otherwise provided in section 13, the reporting entity, its directors and employees shall not be liable to any civil or criminal proceedings against them for furnishing information under clause (b) of sub-section (1) of section 12.”.

Substitution of new section for section 15.

13. For section 15 of the principal Act, the following section shall be substituted, namely:—

Procedure and manner of furnishing information by reporting entities.

“15. The Central Government may, in consultation with the Reserve Bank of India, prescribe the procedure and the manner of maintaining and furnishing information by a reporting entity under sub-section (1) of section 12 for the purpose of implementing the provisions of this Act.”.

Amendment of section 17.

14. In section 17 of the principal Act,—

(i) in sub-section (1),—

(a) in clause (iii), after the word “money-laundering,”, the word “or” shall be inserted;

(b) after clause (iii), the following clause shall be inserted, namely:—

“(iv) is in possession of any property related to crime.”;

(c) in clause (d), after the words “such record or”, the words “property, if required or” shall be inserted;

(d) for the proviso, the following proviso shall be substituted, namely:—

“Provided that no search shall be conducted unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 157 of the Code of Criminal Procedure, 1973, or a complaint has been filed by a person, authorised to investigate the offence mentioned in the Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be, or in cases where such report is not required to be forwarded, a similar report of information received or otherwise has been submitted by an officer authorised to investigate a scheduled offence to an officer not below the rank of Additional Secretary to the Government of India or equivalent being head of the office or Ministry or Department or Unit, as the case may be, or any other officer who may be authorised by the Central Government, by notification, for this purpose.”;

(ii) after sub-section (1), the following sub-section shall be inserted, namely:—

“(1A) Where it is not practicable to seize such record or property, the officer authorised under sub-section (1), may make an order to freeze such property whereupon the property shall not be transferred or otherwise dealt with, except with the prior permission of the officer making such order, and a copy of such order shall be served on the person concerned:

Provided that if, at any time before its confiscation under sub-section (5) or (7) of section 8 or section 58B or sub-section (2A) of section 60, it becomes practical to seize a frozen property, the officer authorised under sub-section (1) may seize such property.”;

(iii) in sub-section (2), after the words, “immediately after search and seizure” the words “or upon issuance of a freezing order” shall be inserted;

(iv) for sub-section (4), the following sub-section shall be substituted, namely:—

“(4) The authority seizing any record or property under sub-section (1) or freezing any record or property under sub-section (1A) shall, within a period of thirty days from such seizure or freezing, as the case may be, file an application, requesting for retention of such record or property seized under sub-section (1) or for continuation of the order of freezing served under sub-section (1A), before the Adjudicating Authority.”.

15. In section 18 of the principal Act, in sub-section (1), for the proviso, the following proviso shall be substituted, namely:—

Amendment
of section 18.

“Provided that no search of any person shall be made unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 157 of the Code of Criminal Procedure, 1973, or a complaint has been filed by a person, authorised to investigate the offence mentioned in the Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be, or in cases where such report is not required to be forwarded, a similar report of information received or otherwise has been submitted by an officer authorised to investigate a scheduled offence to an officer not below the rank of Additional Secretary to the Government of India or equivalent being head of the office or Ministry or Department or Unit, as the case may be, or any other officer who may be authorised by the Central Government, by notification, for this purpose.”;

Substitution of
new sections
for section 20
and section 21.

16. For sections 20 and 21 of the principal Act, the following sections shall be substituted, namely:—

Retention of
property.

“20. (1) Where any property has been seized under section 17 or section 18 or frozen under sub-section (1A) of section 17 and the officer authorised by the Director in this behalf has, on the basis of material in his possession, reason to believe (the reason for such belief to be recorded by him in writing) that such property is required to be retained for the purposes of adjudication under section 8, such property may, if seized, be retained or if frozen, may continue to remain frozen, for a period not exceeding one hundred and eighty days from the day on which such property was seized or frozen, as the case may be.

(2) The officer authorised by the Director shall, immediately after he has passed an order for retention or continuation of freezing of the property for purposes of adjudication under section 8, forward a copy of the order along with the material in his possession, referred to in sub-section (1), to the Adjudicating Authority, in a sealed envelope, in the manner as may be prescribed and such Adjudicating Authority shall keep such order and material for such period as may be prescribed.

(3) On the expiry of the period specified in sub-section (1), the property shall be returned to the person from whom such property was seized or whose property was ordered to be frozen unless the Adjudicating Authority permits retention or continuation of freezing of such property beyond the said period.

(4) The Adjudicating Authority, before authorising the retention or continuation of freezing of such property beyond the period specified in sub-section (1), shall satisfy himself that the property is *prima facie* involved in money-laundering and the property is required for the purposes of adjudication under section 8.

(5) After passing the order of confiscation under sub-section (5) or sub-section (7) of section 8, the Court or the Adjudicating Authority, as the case may be, shall direct the release of all property other than the property involved in money-laundering to the person from whom such property was seized or the persons entitled to receive it.

(6) Where an order releasing the property has been made by the Court under sub-section (6) of section 8 or by the Adjudicating Authority under section 58B or sub-section (24) of section 60, the Director or any officer authorised by him in this behalf may withhold the release of any such property for a period of ninety days from the date of such order, if he is of the opinion that such property is relevant for the appeal proceedings under this Act.

Retention of
records.

21. (1) Where any records have been seized, under section 17 or section 18 or frozen under sub-section (1A) of section 17 and the Investigating Officer or any other officer authorised by the Director in this behalf has reason to believe that any of such records are required to be retained for any inquiry under this Act, such records may if seized, be retained or if frozen, may continue to remain frozen, for a period not exceeding one hundred and eighty days from the day on which such records were seized or frozen, as the case may be.

(2) The person, from whom records seized or frozen, shall be entitled to obtain copies of records.

(3) On the expiry of the period specified under sub-section (1), the records shall be returned to the person from whom such records were seized or whose records were ordered to be frozen unless the Adjudicating Authority permits retention or continuation of freezing of such records beyond the said period.

(4) The Adjudicating Authority, before authorising the retention or continuation of freezing of such records beyond the period specified in sub-section (1), shall satisfy himself that the records are required for the purposes of adjudication under section 8.

(5) After passing of an order of confiscation under sub-section (5) or sub-section (7) of section 8, the Adjudicating Authority shall direct the release of the records to the person from whom such records were seized.

(6) Where an order releasing the records has been made by the Court under sub-section (6) of section 8 or by the Adjudicating Authority under section 58B or sub-section (24) of section 60, the Director or any officer authorised by him in this behalf may withhold the release of any such record for a period of ninety days from the date of such order, if he is of the opinion that such record is relevant for the appeal proceedings under this Act.”

17. In section 22 of the principal Act, in sub-section (1), after the words “a survey or a search,”, the words “or where any record or property is produced by any person or has been resumed or seized from the custody or control of any person or has been frozen under this Act or under any other law for the time being in force,” shall be inserted. Amendment of section 22.

18. In section 23 of the principal Act, for the words and figure “under section 8, it shall, unless otherwise proved to the satisfaction of the Adjudicating Authority”, the words “under section 8 or for the trial of the money-laundering offence, it shall unless otherwise proved to the satisfaction of the Adjudicating Authority or the Special Court” shall be substituted. Amendment of section 23.

19. For section 24 of the principal Act, the following section shall be substituted, namely:— Amendment of section 24.

“24. In any proceedings relating to proceeds of crime under this Act, unless the contrary is proved, it shall be presumed that such proceeds of crime is involved in money-laundering.” Burden of Proof.

20. In section 26 of the principal Act, in sub-section (2), for the words “banking company, financial institution or intermediary”, the words “reporting entity” shall be substituted. Amendment of section 26.

21. In section 28 of the principal Act,— Amendment of section 28.

(i) in sub-section (1), for the words “he is or has been a Judge of the Supreme Court or of a High Court or is qualified to be a Judge of the High Court”, the words “he is a sitting or retired Judge of the Supreme Court or a sitting or retired Chief Justice of a High Court” shall be substituted.

(ii) for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) A person shall not be qualified for appointment as a Member of the Appellate Tribunal unless he is a person of ability, integrity and standing who has shown capacity in dealing with problems relating to handling of matters of proceeds of crime and has qualification and experience of finance, economics, taxation, accountancy, law or administration.”;

(iii) in sub-section (3), for the words “of a High Court”, the words “Chief Justice of a High Court” shall be substituted.

22. For section 42 of the principal Act, the following sections shall be substituted, namely:— Substitution of new sections for section 42.

“42. Any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law arising out of such order: Appeal to Supreme Court.

Provided that the Supreme Court may, if it is satisfied that the applicant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

42A. Every appeal filed before a High Court but pending before it immediately before the commencement of the Prevention of Money-laundering (Amendment) Continuation of certain appeals before the High Court.

Act, 2011 shall continue to be an appeal before the High Court and shall be dealt with by that High Court as if the Prevention of Money-laundering (Amendment) Act, 2011 had not been passed.”.

Amendment
of section 44.

23. In section 44 of the principal Act, in sub-section (1),—

(i) in clause (a), in the proviso, the word “or” occurring at the end shall be omitted;

(ii) in clause (b), for the words “cognizance of the offence for which the accused is committed to it for trial” the words “cognizance of offence under section 3, without the accused being committed to it for trial” shall be substituted;

(iii) after clause (b), the following clauses shall be inserted, namely:—

“(c) if the court which has taken cognizance of the scheduled offence is other than the Special Court which has taken cognizance of the complaint of the offence of money-laundering under sub-clause (b), it shall, on an application by the authority authorised to file a complaint under this Act, commit the case relating to the scheduled offence to the Special Court and the Special Court shall, on receipt of such case proceed to deal with it from the stage at which it is committed.

(d) a Special Court while trying the scheduled offence or the offence of money-laundering shall hold trial in accordance with the provisions of the Code of Criminal Procedure, 1973, as it applies to a trial before a Court of Session.”.

2 of 1974.

Amendment
of section 50.

24. In section 50 of the principal Act, in sub-section (1), in clause (b), for the words “banking company or a financial institution or a company,” the words “reporting entity” shall be substituted.

Amendment
of section 54.

25. In section 54 of the principal Act,—

(i) in the opening portion, for the word “officers”, the words “officers and others” shall be substituted;

(ii) for clause (d), the following clause shall be substituted, namely:—

“(d) members of the recognised stock exchange referred to in clause (f) of section 2 and the officers of the stock exchanges recognised under section 4 of the Securities Contracts (Regulation) Act, 1956;

42 of 1956.

(iii) after clause (h), the following clauses shall be inserted, namely:—

“(ha) officers of the Insurance Regulatory and Development Authority established under section 3 of the Insurance Regulatory and Development Authority Act, 1999;

41 of 1999.

(hb) officers of the Forward Markets Commission established under section 3 of the Forward Contracts (Regulation) Act, 1952;

74 of 1952.

(hc) officers and members of the recognised association recognised under section 6 of the Forward Contracts (Regulation) Act, 1952;

74 of 1952.

(hd) officers of the Pension Fund Regulatory and Development Authority;

(he) officers of the Department of Posts in the Government of India;

(hf) Registrars or Sub-Registrars appointed by the State Governments under section 6 of the Registration Act, 1908;

16 of 1908.

(hg) registering authority empowered to register motor vehicles under Chapter IV of the Motor Vehicles Act, 1988;

59 of 1988.

38 of 1949. (hh) officers and members of the Institute of Chartered Accountants of India constituted under section 3 of the Chartered Accountants Act, 1949;

23 of 1959. (hi) officers and members of the Institute of Cost and Works Accountants of India constituted under section 3 of the Cost and Works Accountants Act, 1959;

56 of 1980. (hj) officers and members of the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980;";

(iv) in clause (j) for the words "banking companies", the words "reporting entities" shall be substituted.

26. After section 58, the following sections shall be inserted, namely:—

Insertion of
new sections
58A and 58B.

"58A. Where on closure of the criminal case or conclusion of a trial in a criminal court outside India under the corresponding law of any other country, such court finds that the offence of money-laundering has not taken place or the property in India is not involved in money-laundering, the Special Court shall, on an application moved by the concerned person or the Director, after notice to the other party, order release of such property to the person entitled to receive it.

Special Court
to release the
property.

58B. Where the trial under the corresponding law of any other country cannot be conducted by reason of the death of the accused or the accused being declared a proclaimed offender or for any other reason or having commenced but could not be concluded, the Central Government shall, on receipt of a letter of request from a court or authority in a contracting State requesting for confiscation or release of property, as the case may be, forward the same to the Director to move an application before the Special Court and upon such application the Special Court shall pass appropriate orders regarding confiscation or release of such property involved in the offence of money-laundering."

Letter of
request of a
contracting
State or
authority for
confiscation
or release the
property.

27. In section 60 of the principal Act,—

Amendment
of section 60.

(i) in sub-section (1), for the words and figures "property under section 5 or where an Adjudicating Authority has made an order confirming such attachment or confiscation of any property under section 8", the words, figures, brackets and letter "property under section 5 or for freezing under sub-section (1A) of section 17 or where an Adjudicating Authority has made an order relating to a property under section 8 or where a Special Court has made an order of confiscation relating to a property under sub-section (5) or sub section (6) of section 8" shall be substituted;

(ii) in sub-section (2),—

(a) for the words "attachment or confiscation", the words "attachment, seizure, freezing or confiscation" shall be substituted;

(b) for the word and figure "section 3", the words "a corresponding law" shall be substituted;

(iii) after sub-section (2), the following sub-section shall be inserted, namely:—

"(2A) Where on closure of the criminal case or conclusion of trial in a criminal court outside India under the corresponding law of any other country, such court finds that the offence of money-laundering under the corresponding law of that country has been committed, the Adjudicating Authority shall, on receipt of an application from the Director for execution of confiscation under sub-section (2), order, after giving notice to the affected persons, that such property involved in money-laundering or which has been used for commission of the offence of money-laundering stand confiscated to the Central Government."

Amendment
of section 63.

28. In section 63 of the principal Act, after sub-section (3), the following sub-section shall be inserted, namely:—

“(4) Notwithstanding anything contained in clause (c) of sub-section (2), a person who intentionally disobeys any direction issued under section 50 shall also be liable to be proceeded against under section 174 of the Indian Penal Code.”.

45 of 1860.

Substitution
of new
section for
section 69.
Recovery of
fine or
penalty.

29. For section 69 of the principal Act, the following section shall be substituted, namely:—

“69. Where any fine or penalty imposed on any person under section 13 or section 63 is not paid within six months from the day of imposition of fine or penalty, the Director or any other officer authorised by him in this behalf may proceed to recover the amount from the said person in the same manner as prescribed in Schedule II of the Income-tax Act, 1961 for the recovery of arrears and he or any officer authorised by him in this behalf shall have all the powers of the Tax Recovery Officer mentioned in the said Schedule for the said purpose.”.

43 of 1961.

Amendment
of section 70.

30. In section 70 of the principal Act, the *Explanation* shall be numbered as *Explanation 1* thereof and after *Explanation 1* as so numbered, the following *Explanation* shall be inserted, namely:—

“*Explanation 2.*—For the removal of doubts, it is hereby clarified that a company may be prosecuted, notwithstanding whether the prosecution or conviction of any legal juridical person shall be contingent on the prosecution or conviction of any individual.”.

Amendment
of section 72.

31. In section 72 of the principal Act, in sub-section (2), for the words “High Court”, wherever they occur, the words “Supreme Court” shall be substituted.

Amendment
of section 73.

32. In section 73 of the principal Act, in sub-section (2),—

(i) after clause (a), the following clause shall be inserted, namely:—

“(aa) the manner of provisional attachment of property under sub-section (1) of section 5;”;

(ii) after clause (e), the following clause shall be inserted, namely:—

“(ee) the manner of seizing or taking possession of property attached under section 5 or frozen under sub-section (1A) of section 17 or under sub-section (4) of section 8;”;

(iii) clause (h) shall be omitted;

(iv) in clause (i), for the words “the time within which”, the words “the nature and value of transactions and the time within which” shall be substituted;

(v) for clause (j), the following clauses shall be substituted, namely:—

“(j) the manner and the conditions in which identity of clients shall be verified by the reporting entities under clause (c) of sub-section (1) of section 12;

“(jj) the manner of identifying beneficial owner, if any, from the clients by the reporting entities under clause (d) of sub-section (1) of section 12;

“(jjj) the period of interval in which the reports are sent by the reporting entities or any of its employees under clause (c) of sub-section (2) of section 13;”;

(vi) after clause (p), the following clause shall be inserted, namely:—

“(pp) the manner in which the forwarding of the order for retention or continuation of freezing of the property and the period of keeping such order and material under sub-section (2) of section 20;”.

33. In the Schedule to the principal Act,—

(i) for Part A, the following Part shall be substituted, namely:—

Amendment
of the
Schedule.

“PART A

PARAGRAPH 1

OFFENCES UNDER THE INDIAN PENAL CODE

(45 OF 1860)

Section	Description of offence
120B	Criminal conspiracy.
121	Waging or attempting to wage war or abetting waging of war, against the Government of India.
121A	Conspiracy to commit offences punishable by section 121 against the State.
255	Counterfeiting Government stamp.
257	Making or selling instrument for counterfeiting Government stamp.
258	Sale of counterfeit Government stamp.
259	Having possession of counterfeit Government stamp.
260	Using as genuine a Government stamp known to be counterfeit.
302	Murder.
304	Punishment for culpable homicide not amounting to murder.
307	Attempt to murder.
308	Attempt to commit culpable homicide.
327	Voluntarily causing hurt to extort property, or to constrain to an illegal act.
329	Voluntarily causing grievous hurt to extort property, or to constrain to an illegal act.
364A	Kidnapping for ransom, etc.
384 to 389	Offences relating to extortion.
392 to 402	Offences relating to robbery and dacoity.
411	Dishonestly receiving stolen property.
412	Dishonestly receiving property stolen in the commission of a dacoity.
413	Habitually dealing in stolen property.
414	Assisting in concealment of stolen property.
417	Punishment for cheating.
418	Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect.
419	Punishment for cheating by personation.
420	Cheating and dishonestly inducing delivery of property.
421	Dishonest or fraudulent removal or concealment of property to prevent distribution among creditors.

Section	Description of offence
422	Dishonestly or fraudulently preventing debt being available for creditors.
423	Dishonest or fraudulent execution of deed of transfer containing false statement of consideration.
424	Dishonest or fraudulent removal or concealment of property.
467	Forgery of valuable security, will, etc.
471	Using as genuine a forged document or electronic record.
472 and 473	Making or possessing counterfeit seal, etc., with intent to commit forgery.
475 and 476	Counterfeiting device or mark.
481	Using a false property mark.
482	Punishment for using a false property mark.
483	Counterfeiting a property mark used by another.
484	Counterfeiting a mark used by a public servant.
485	Making or possession of any instrument for counterfeiting a property mark.
486	Selling goods marked with a counterfeit property mark.
487	Making a false mark upon any receptacle containing goods.
488	Punishment for making use of any such false mark.
489A	Counterfeiting currency notes or bank notes.
489B	Using as genuine, forged or counterfeit currency notes or bank notes.

PARAGRAPH 2

OFFENCES UNDER THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES
ACT, 1985

(61 OF 1985)

Section	Description of offence
15	Contravention in relation to poppy straw.
16	Contravention in relation to coca plant and coca leaves.
17	Contravention in relation to prepared opium.
18	Contravention in relation to opium poppy and opium.
19	Embezzlement of opium by cultivator.
20	Contravention in relation to cannabis plant and cannabis.
21	Contravention in relation to manufactured drugs and preparations.
22	Contravention in relation to psychotropic substances.
23	Illegal import into India, export from India to transshipment of narcotic drugs and psychotropic substances.
24	External dealings in narcotic drugs and psychotropic substances in contravention of section 12 of the Narcotics Drugs and Psychotropic Substances Act, 1985.

Section	Description of offence
25A	Contravention of orders made under section 9A of the Narcotic Drugs and Psychotropic Substances Act, 1985.
27A	Financing illicit traffic and harbouring offenders.
29	Abetment and criminal conspiracy.

PARAGRAPH 3

OFFENCES UNDER THE EXPLOSIVE SUBSTANCES ACT, 1908

(6 OF 1908)

Section	Description of offence
3	Causing explosion likely to endanger life or property.
4	Attempt to cause explosion, or for making or keeping explosives with intent to endanger life or property.
5	Making or possessing explosives under suspicious circumstances.

PARAGRAPH 4

OFFENCES UNDER THE UNLAWFUL ACTIVITIES (PREVENTION) ACT, 1967

(37 OF 1967)

Section	Description of offence
10 read with section 3	Penalty for being member of an unlawful association, etc.
11 read with section 3	Penalty for dealing with funds of an unlawful association.
13 read with section 3	Punishment for unlawful activities.
16 read with section 15	Punishment for terrorist act.
16A	Punishment for making demands of radioactive substances, nuclear devices, etc.
17	Punishment for raising fund for terrorist act.
18	Punishment for conspiracy, etc.
18A	Punishment for organising of terrorist camps.
18B	Punishment for recruiting of any person or persons for terrorist act.
19	Punishment for harbouring, etc.
20	Punishment for being member of terrorist gang or organisation.
21	Punishment for holding proceeds of terrorism.
38	Offence relating to membership of a terrorist organisation.
39	Offence relating to support given to a terrorist organisation.
40	Offence of raising fund for a terrorist organisation.

PARAGRAPH 5

OFFENCES UNDER THE ARMS ACT, 1959

(54 OF 1959)

Section	Description of offence
25	<p>To manufacture, sell, transfer, convert, repair or test or prove or expose or offer for sale or transfer or have in his possession for sale, transfer, conversion, repair, test or proof, any arms or ammunition to contravention of section 5 of the Arms Act, 1959.</p> <p>To acquire, have in possession or carry any prohibited arms or prohibited ammunition in contravention of section 7 of the Arms Act, 1959.</p> <p>Contravention of section 24A of the Arms Act, 1959 relating to prohibition as to possession of notified arms in disturbed areas, etc.</p> <p>Contravention of section 24B of the Arms Act, 1959 relating to prohibition as to carrying of notified arms in or through public places in disturbed areas.</p> <p>Other offences specified in section 25.</p>
26	<p>To do any act in contravention of any provisions of section 3, 4, 10 or section 12 of the Arms Act, 1959 in such manner as specified in sub-section (1) of section 26 of the said Act.</p> <p>To do any act in contravention of any provisions of section 5, 6, 7 or section 11 of the Arms Act, 1959 in such manner as specified in sub-section (2) of section 26 of the said Act.</p> <p>Other offences specified in section 26.</p>
27	Use of arms or ammunition in contravention of section 5 or use of any arms or ammunition in contravention of section 7 of the Arms Act, 1959.
28	Use and possession of fire arms or imitation fire arms in certain cases.
29	Knowingly purchasing arms from unlicensed person or for delivering arms, etc., to person not entitled to possess the same.
30	Contravention of any condition of a licence or any provisions of the Arms Act, 1959 or any rule made thereunder.

PARAGRAPH 6

OFFENCES UNDER THE WILD LIFE (PROTECTION) ACT, 1972

(53 OF 1972)

Section	Description of offence
51 read with section 9	Hunting of wild animals.
51 read with section 17A	Contravention of provisions of section 17A relating to prohibition of picking, uprooting, etc., of specified plants.

Section	Description of offence
51 read with section 39	Contravention of provisions of section 39 relating to wild animals, etc., to be Government property.
51 read with section 44	Contravention of provisions of section 44 relating to dealings in trophy and animal articles without licence prohibited.
51 read with section 48	Contravention of provisions of section 48 relating to purchase of animal, etc., by licensee.
51 read with section 49B	Contravention of provisions of section 49B relating to prohibition of dealings in trophies, animals articles, etc., derived from scheduled animals.

PARAGRAPH 7

OFFENCES UNDER THE IMMORAL TRAFFIC (PREVENTION) ACT, 1956

(104 OF 1956)

Section	Description of offence
5	Procuring, inducing or taking person for the sake of prostitution.
6	Detaining a person in premises where prostitution is carried on.
8	Seducing or soliciting for purpose of prostitution.
9	Seduction of a person in custody.

PARAGRAPH 8

OFFENCES UNDER THE PREVENTION OF CORRUPTION ACT, 1988

(49 OF 1988)

Section	Description of offence
7	Public servant taking gratification other than legal remuneration in respect of an official act.
8	Taking gratification in order, by corrupt or illegal means, to influence public servant.
9	Taking gratification for exercise of personal influence with public servant.
10	Abetment by public servant of offences defined in section 8 or section 9 of the Prevention of Corruption Act, 1988.
13	Criminal misconduct by a public servant.

PARAGRAPH 9

OFFENCES UNDER THE EXPLOSIVES ACT, 1884

(4 OF 1884)

Section	Description of offence
9B	Punishment for certain offences.
9C	Offences by companies.

PARAGRAPH 10

OFFENCES UNDER THE ANTIQUITIES AND ARTS TREASURES ACT, 1972

(52 OF 1972)

Section	Description of offence
25 read with section 3	Contravention of export trade in antiquities and art treasures.
28	Offences by companies.

PARAGRAPH 11

OFFENCES UNDER THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992

(15 OF 1992)

Section	Description of offence
12A read with section 24	Prohibition of manipulative and deceptive devices, insider trading and substantial.
24	Acquisition of securities or control.

PARAGRAPH 12

OFFENCES UNDER THE CUSTOMS ACT, 1962

(52 OF 1962)

Section	Description of offence
135	Evasion of duty or prohibitions.

PARAGRAPH 13

OFFENCES UNDER THE BONDED LABOUR SYSTEM (ABOLITION) ACT, 1976

(19 OF 1976)

Section	Description of offence
16	Punishment for enforcement of bonded labour.
18	Punishment for extracting bonded labour under the bonded labour system.
20	Abetment to be an offence.

PARAGRAPH 14

OFFENCES UNDER THE CHILD LABOUR (PROHIBITION AND REGULATION) ACT, 1986

(61 OF 1986)

Section	Description of offence
14	Punishment for employment of any child to work in contravention of the provisions of section 3.

PARAGRAPH 15

OFFENCES UNDER THE TRANSPLANTATION OF HUMAN ORGANS ACT, 1994

(42 OF 1994)

Section	Description of offence
18	Punishment for removal of human organ without authority.
19	Punishment for commercial dealings in human organs.
20	Punishment for contravention of any other provisions of this Act.

PARAGRAPH 16

OFFENCES UNDER THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2000

(56 OF 2000)

Section	Description of offence
23	Punishment for cruelty to juvenile or child.
24	Employment of juvenile or child for begging.
25	Penalty for giving intoxicating liquor or narcotic drug or psychotropic substance to juvenile or child.
26	Exploitation of juvenile or child employee.

PARAGRAPH 17

OFFENCES UNDER THE EMIGRATION ACT, 1983

(31 OF 1983)

Section	Description of offence
24	Offences and penalties.

PARAGRAPH 18

OFFENCES UNDER THE PASSPORTS ACT, 1967

(15 OF 1967)

Section	Description of offence
12	Offences and penalties.

PARAGRAPH 19

OFFENCES UNDER THE FOREIGNERS ACT, 1946

(31 OF 1946)

Section	Description of offence
14	Penalty for contravention of provisions of the Act, etc.
14B	Penalty for using forged passport.
14C	Penalty for abetment.

PARAGRAPH 20

OFFENCES UNDER THE COPYRIGHT ACT, 1957

(14 OF 1957)

Section	Description of offence
63	Offence of infringement of copyright or other rights conferred by this Act.
63A	Enhanced penalty on second and subsequent convictions.
63B	Knowing use of infringing copy of computer programme.
68A	Penalty for contravention of section 52A.

PARAGRAPH 21

OFFENCES UNDER THE TRADE MARKS ACT, 1999

(47 OF 1999)

Section	Description of offence
103	Penalty for applying false trade marks, trade descriptions, etc.
104	Penalty for selling goods or providing services to which false trade mark or false trade description is applied.
105	Enhanced penalty on second or subsequent conviction.
107	Penalty for falsely representing a trade mark as registered.
120	Punishment of abetment in India of acts done out of India.

PARAGRAPH 22

OFFENCES UNDER THE INFORMATION TECHNOLOGY ACT, 2000

(21 OF 2000)

Section	Description of offence
72	Penalty for breach of confidentiality and privacy.
75	Act to apply for offence or contravention committed outside India.

PARAGRAPH 23

OFFENCES UNDER THE BIOLOGICAL DIVERSITY ACT, 2002

(18 OF 2003)

Section	Description of offence
55 read with section 6.	Penalties for contravention of section 6, etc.

PARAGRAPH 24

OFFENCES UNDER THE PROTECTION OF PLANT VARIETIES AND FARMERS' RIGHTS ACT, 2001

(53 OF 2001)

Section	Description of offence
70 read with section 68	Penalty for applying false denomination, etc.
71 read with section 68	Penalty for selling varieties to which false denomination is applied.
72 read with section 68	Penalty for falsely representing a variety as registered.
73 read with section 68	Penalty for subsequent offence.

PARAGRAPH 25

OFFENCES UNDER THE ENVIRONMENT PROTECTION ACT, 1986

(29 OF 1986)

Section	Description of offence
15 read with section 7	Penalty for discharging environmental pollutants, etc., in excess of prescribed standards.
15 read with section 8	Penalty for handling hazardous substances without complying with procedural safeguards.

PARAGRAPH 26

OFFENCES UNDER THE WATER (PREVENTION AND CONTROL OF POLLUTION) ACT, 1974

(6 OF 1974)

Section	Description of offence
41(2)	Penalty for pollution of stream or well.
43	Penalty for contravention of provisions of section 24.

PARAGRAPH 27

OFFENCES UNDER THE AIR (PREVENTION AND CONTROL OF POLLUTION) ACT, 1981

(14 OF 1981)

Section	Description of offence
37	Failure to comply with the provisions for operating industrial plant.

PARAGRAPH 28

OFFENCES UNDER THE SUPPRESSION OF UNLAWFUL ACTS AGAINST SAFETY OF MARITIME
NAVIGATION AND FIXED PLATFORMS ON CONTINENTAL SHELF
ACT, 2002

(69 OF 2002)

Section	Description of offence
3	Offences against ship, fixed platform, cargo of a ship, maritime navigational facilities, etc.”;

(ii) in Part B, paragraphs 1 to 25 shall be omitted;

(iii) in Part C, serial number (2) and the entries relating thereto shall be omitted.

STATEMENT OF OBJECTS AND REASONS

The Prevention of Money-laundering Act, 2002 was enacted to prevent money-laundering and to provide for confiscation of property derived from, or involved in, money-laundering and for matters connected therewith or incidental thereto. The aforesaid Act also addresses the international obligations under the Political Declaration and Global Programme of Action adopted by the General Assembly of the United Nations to prevent money-laundering. The Act was amended in the year 2005 and 2009 to remove the difficulties arisen in implementation of the Act.

2. The problem of money-laundering is no longer restricted to the geo political boundaries of any country. It is a global menace that cannot be contained by any nation alone. In view of this, India has become a member of the Financial Action Task Force and Asia Pacific Group on money-laundering, which are committed to the effective implementation and enforcement of internationally accepted standards against money-laundering and the financing of terrorism. Consequent to the submission of an action plan to the Financial Action Task Force to bring anti money-laundering legislation of India at par with the international standards and to obviate some of the deficiencies in the Act that have been experienced by the implementing agencies, the need to amend the Prevention of Money-Laundering Act, 2002 has become necessary.

3. The Prevention of Money-Laundering (Amendment) Bill, 2011, *inter alia*, seeks to—

(a) introduce the concept of 'corresponding law' to link the provisions of Indian law with the laws of foreign countries and provide for transfer of the proceeds of the foreign predicate offence in any manner in India;

(b) introduce the concept of 'reporting entity' to include therein a banking company, financial institution, intermediary or a person carrying on a designated business or profession;

(c) enlarge the definition of offence of money-laundering to include therein the activities like concealment, acquisition, possession and use of proceeds of crime as criminal activities and remove existing limit of five lakh rupees of fine under the Act;

(d) make provision for attachment and confiscation of the proceeds of crime even if there is no conviction so long as it is proved that offence of money-laundering has taken place and property in question is involved in money-laundering;

(e) confer power upon the Director to call for records of transactions or any additional information that may be required for the purposes of the Prevention of money-laundering and also to make inquiries for non-compliance of reporting obligations cast upon them;

(f) make the reporting entity, its designated directors on the Board and employees responsible for omissions or commissions in relation to the reporting obligations under Chapter IV of the Act;

(g) provide that in any proceedings relating to proceeds of crime under the aforesaid Act, unless the contrary is proved, it shall be presumed that such proceeds of crime is involved in money-laundering;

(h) provide for appeal against the orders of the Appellate Tribunal directly to the Supreme Court;

(i) provide for the process of transfer of the cases of Scheduled offence pending in a court which had taken cognizance of the offence to the Special Court for trial of offence of money-laundering and also provide that the Special Court shall, on receipt of such case proceed to deal with it from the stage at which it is committed.

(j) putting all the offences listed in Part A and Part B of the Schedule to the aforesaid Act into Part A of that Schedule instead of keeping them in two Parts so that the provision of monetary threshold does not apply to the offences.

4. The Bill seeks to achieve the above objects.

NEW DELHI;
The 16th December, 2011.

PRANAB MUKHERJEE.

Notes on Clauses

Clause 1.—This clause provides for the short title and commencement of the proposed legislation.

Clause 2.—This clause seeks to amend section 2 of the Prevention of Money-Laundering Act, 2002 relating to definitions. This clause, *inter alia*, seeks to modify, amend or substitute certain definitions and to insert certain other new definitions. Sub-clause (i) seeks to insert the definition of the expression “beneficial owner” to mean an individual who ultimately owns or controls a client of a reporting entity or the person on whose behalf a transaction is being conducted and includes a person who exercises ultimate effective control over a juridical person. Sub-clause (ii) seeks to define the term “client” to mean a person who is engaged in a financial transaction or activity with a reporting entity and includes a person on whose behalf the person who engaged in the transaction or activity, is acting. Sub-clause (iii) seeks to insert two new definitions relating to “corresponding law” to mean any law of any foreign country corresponding to any of the provisions of the Act or dealing with offences in that country corresponding to any of the scheduled offences and the definition of the term “dealer” to provide the same meaning as assigned to it in clause (b) of section 2 of the Central Sales Tax Act, 1956.

Sub-clause (v) seeks to substitute the existing definition of the expression “financial institution” to mean a financial institution as defined in clause (c) of section 45-I of the Reserve Bank of India Act, 1934 and includes a chit fund company, a housing finance institution, an authorised person, a payment system operator, a non-banking financial company and the Department of Posts in the Government of India. Sub-clause (vi) seeks to substitute clause (n) of section 2 so as to substitute the expression “intermediary” to mean a stock-broker, sub-broker, share transfer agent, banker to an issue, trustee to a trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser or any other intermediary associated with securities market and registered under section 12 of the Securities and Exchange Board of India Act, 1992; or an association recognised or registered under the Forward Contracts (Regulation) Act, 1952 or any member of such association; or intermediary registered by the Pension Fund Regulatory and Development Authority; or a recognised stock exchange referred to in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956. Sub-clause (vii) seeks to amend clause (q) to omit the words “and includes a person carrying on designated business or profession”.

Sub-clause (ix) seeks to insert certain new definitions such as,—(i) “person carrying on designated business or profession” to mean a person carrying on activities for playing games of chance for cash or kind, and includes such activities associated with casino; a Registrar or Sub-Registrar appointed under section 6 of the Registration Act, 1908; real estate agent; dealer in precious metals, precious stones and other high value goods, and any person engaged in safekeeping and administration of cash and liquid securities on behalf of other persons; or person carrying on such other activities as the Central Government may, by notification, so designate, from time to time; (ii) “precious metals” to mean gold, silver, platinum, palladium or rhodium or such other metal as may be notified by the Central Government; (iii) “precious stone” to mean diamond, emerald, ruby, sapphire or any such other stone as may be notified by the Central Government. Sub-clause (x) seeks to insert, for the removal of doubts, an *Explanation* after clause (v) of sub-section (1) of section 2, that the term “property” includes property of any kind used in the commission of an offence under this Act or any of the Scheduled offences. Sub-clause (xi) seeks to define the term “reporting entity” to mean a banking company, financial institution, intermediary or a person carrying on a designated business or profession.

Clause 3.—This clause seeks to amend section 3 of the Act relating to offence of money-laundering. This clause seeks to include acts of concealment, acquisition, possession and use of the proceeds of crime within the provision of offence of money-laundering.

Clause 4.—This clause seeks to amend section 4 of the Act relating to punishment for money-laundering to omit the fine of five lakh rupees, since the limit of fine on legal persons under Act being very small.

Clause 5.—This clause seeks to substitute sub-section (1) of section (5) of the principal Act relating to attachment of property involved in money-laundering to facilitate attachment of proceeds of crime in all cases, irrespective of in whose possession the property is, and also provides for attachment in cases where report has been filed under the corresponding law of any other country. Further this clause seeks to increase the period of provisional attachment from existing one hundred and fifty days to one hundred and eighty days.

Clause 6.—This clause seeks to amend section 8 of the Act relating to adjudication to delink the attachment of the property to the pendency of the proceedings relating to the Scheduled offence and links it to the money laundering offence. It further seeks to delink the attachment to conviction. It also seeks to broaden the scope of seizing by also enabling freezing of property and documents which cannot be seized. It also seeks to take away the powers of the adjudicating authority to release the attached properties, where the scheduled offence itself is found not to have been committed or the attached property is not involved in money-laundering and vest the same with the Special Court.

Clause 7.—This clause seeks to amend section 9 of the Act relating to vesting of property in Central Government by taking away the power to confiscate the attached property from the Adjudicating Authority and vesting it with the Special Court.

Clause 8.—This clause seeks to make the consequential changes in section 10 of the Act relating to management of properties confiscated under this Chapter as the provisions relating to confiscation has been provided under some of the sub-sections of section 8.

Clause 9.—This clause seeks to substitute section 12 and to introduce the expression “reporting entity” in the place of “banking company, financial institution or intermediary” in section 12 of the Act. It also widens the scope of maintenance of record that is prescribed for reporting. This clause also seeks to omit the words “series of transactions integrally connected” in section 12.

Clause 10.—This clause seeks to insert a new section 12A relating to access to information to empower the Director to call for records of transaction or any additional information that may be required and for the power to make enquires for non-compliance of reporting entities to the obligations imposed upon such reporting entities.

Clause 11.—This clause seeks to amend section 13 of the Act relating to powers of Director to impose fine by the Director on the designated Directors and the employees of the reporting entities. It further seeks to empower the director for appointment of a chartered accountant from amongst a panel of accountants, maintained by the Central Government. It also seeks to make the designated directors on the board of a company alongwith the employees responsible for omissions or commissions of any reporting entities in their failure and to impose monetary penalty on such reporting entity, or its designated director on the Board or any of its employees, which shall not be less than ten thousand rupees but may extend to one lakh rupees for each such failure.

Clause 12.—This clause seeks to substitute new section for section 14 not to make liable to any civil or criminal proceedings against the reporting entity, its directors and employees in certain cases for furnishing information under clause (b) of sub-section (1) of section 12.

Clause 13.—This clause seeks to substitute a new section for section 15 of the Act relating to procedure and manner of furnishing information by reporting entities. It provides that the Central Government may, in consultation with the Reserve Bank of India, prescribe the procedure and the manner of maintaining and furnishing information by a reporting entity under sub-section (1) of section 12 for the purpose of implementing the provisions of the Act.

Clause 14.—This clause seeks to amend section 17 of the Act relating to search and seizure and includes provision for freezing any property, so that it can be seized or attached and confiscated later. Sub-clause (ii) seeks to insert a new sub-section (1A) after sub-section (1)

to provide that no search shall be conducted unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 157 of the Code of Criminal Procedure, 1973, or a complaint has been filed by a person, authorised to investigate the offence mentioned in the Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be, or in cases where such report is not required to be forwarded, a similar report of information received or otherwise has been submitted by an officer authorised to investigate a scheduled offence to an officer not below the rank of Additional Secretary to the Government of India or equivalent being head of the office or Ministry or Department or Unit, as the case may be, or any other officer who may be authorised by the Central Government, by notification, for this purpose.

Sub-clause (iv) seeks to substitute sub-section (4) with new sub-section to provide that the authority seizing any record or property under sub-section (1) or freezing any record or property under sub-section (1A) shall, within a period of thirty days from such seizure or freezing, as the case may be, file an application, requesting for retention of such record or property seized under sub-section (1) or for continuation of the order of freezing served under sub-section (1A), before the Adjudicating Authority.

Clause 15.—This clause seeks to amend section 18 of the Act relating to search of persons. It seeks to substitute the existing proviso with a new proviso in sub-section (1) of section 18 so as to provide that, no search of any person shall be made unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 157 of the Code of Criminal Procedure, 1973, or a complaint has been filed by a person, authorised to investigate the offence mentioned in the Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be, or in cases where such report is not required to be forwarded, a similar report of information received or otherwise has been submitted by an officer authorised to investigate a scheduled offence to an officer not below the rank of Additional Secretary to the Government of India or equivalent being head of the office or Ministry or Department or Unit, as the case may be, or any other officer who may be authorised by the Central Government, by notification, for this purpose.

Clause 16.—This clause seeks to substitute new sections for section 20 and section 21 of the Act relating to retention of property and retention of records respectively. It proposes, *inter alia*, to increase the period of withholding of releasing of property or records, as the case may be, from the existing forty-five days to ninety days so as to allow sufficient time to the officers of Enforcement Directorate to file appeal and obtain a stay in the cases required.

Clause 17.—This clause seeks to amend section 22 of the Act relating to presumption as to records or property also to include cases such as where any record or property is produced by any person or it has been seized from the custody or control of any person or has been frozen under the Act or under any other law for the time being in force.

Clause 18.—This clause seeks to amend section 23 of the Act relating to presumption in inter-connected transactions to include the Special Court also alongwith the Adjudicating Authority for the purposes of adjudication or confiscation under section 8 or for trial of the money-laundering offence.

Clause 19.—This clause seeks to substitute section 24 of the principal Act relating to burden of proof. This clause proposes that in any proceedings relating to proceeds of crime under the proposed legislation, unless the contrary is proved, it shall be presumed that such proceeds of crime is involved in money-laundering so as to ensure the property related to the offence is not passed off to someone to avoid confiscation.

Clause 20.—This clause seeks to amend section 26 of the Act relating to Appeals to the Appellate Tribunal by replacing reference relating to “banking company, financial institution or intermediary” with the term “reporting entity”.

Clause 21.—This clause seeks to amend section 28 of the principal Act relating to qualifications for appointment of Chairperson and member of the Appellate Tribunal.

Sub-clause (i) seeks to amend the sub-section (1) of section 28 to substitute the words “he is a sitting or retired Judge of the Supreme Court or a sitting or retired Chief Justice of a High Court” for the words “he is or has been a Judge of the Supreme Court or of a High Court or is qualified to be a Judge of the High Court”. Sub-clause (ii) seeks to substitute sub-section (2) of the said section to provide for qualification of appointment as a Member of the Appellate Tribunal unless such person is of ability, integrity and standing who has shown capacity in dealing with problems relating to handling of matters of proceeds of crime and has qualification and experience of finance, economics, taxation, accountancy, law or administration.

Clause 22.—This clause seeks to substitute the existing section 42 of the Act relating to Appeals to High Court with a new section relating to Appeal to Supreme Court. This clause provides that any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law arising out of such order. However, the Supreme Court may, if it is satisfied that the applicant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days. This clause further provides for continuation of certain appeals filed before the High Court but pending before it immediately before the commencement of the proposed legislation to continue to be an appeal before the High Court and to be dealt with by that High Court as if the proposed legislation had not been passed.

Clause 23.—This clause seeks to amend sub-section (1) of section 44 of the Act relating to offences triable by Special Courts. Sub-clause (ii) provides that if the court which has taken cognizance of the scheduled offence is other than the Special Court which has taken cognizance of the complaint of the offence of money-laundering under sub-clause (b), it shall, on an application by the authority authorised to file a complaint under the proposed legislation, commit the case relating to the scheduled offence to the Special Court and the Special Court shall, on receipt of such case proceed to deal with it from the stage at which it is committed. Sub-clause (iii) seeks to insert a new clause (c) after clause (b) in the said section provides that a Special Court while trying the scheduled offence or the offence of money-laundering shall hold trial in accordance with the provisions of the Code of Criminal Procedure, 1973, as it applies to a trial before a Court of Session.

Clause 24.—This clause seeks to amend section 50 of the Act relating to powers of authorities regarding summons, production of documents and to give evidence. It seeks to make a consequential amendment to substitute the words “banking company or a financial institution or a company,” with the words “reporting entity”.

Clause 25.—This clause seeks to amend section 54 of the Act relating to certain officers to assist in inquiry, etc. It seeks to provide for enlarging the scope of section 54 so as to include new set of officials and persons who will be expected to assist the authorities in the enforcement of the Act by bring various departments, entities and members of organisations under the coverage of the Act, such as the Insurance Regulatory and Development Authority, the Department of Posts, the Forward Markets Commission, the Pension Fund Regulatory and Development Authority, the Registrar or Sub-Registrars appointed under the Registration Act, 1908, the registering Authority empowered to register motor vehicles under the Motor Vehicle Act, 1988, the recognised stock exchanges, the Institute of Chartered Accountants of India, the Institute of Cost and Works Accountants of India and the Institute of Company Secretaries of India.

Clause 26.—This clause seeks to insert new sections 58A and 58B. The proposed new section 58A relating to Special Court to release the property, This new clause provides that, if on closure of the criminal case or conclusion of a trial in a criminal court outside India under the corresponding law of any other country, such court finds that the offence of money-laundering has not taken place or the property in India is not involved in money-laundering, the Special Court shall, on an application moved by the concerned person or the

Director, after notice to the other party, order release of such property to the person entitled to receive it. The proposed new section 58B relating to letter of request of a contracting State or authority for confiscation or release the property provides that, if the trial under the corresponding law of any other country cannot be conducted by reason of the death of the accused or the accused being declared a proclaimed offender or for any other reason or having commenced but could not be concluded, the Central Government shall, on receipt of a letter of request from a court or authority in a contracting State requesting for confiscation or release of property, as the case may be, forward the same to the Director to move an application before the Special Court and upon such application the Special Court shall pass appropriate orders regarding confiscation or release of such property involved in the offence of money-laundering.

Clause 27.—This clause seeks to amend section 60 of the Act relating to attachment, seizure and confiscation, etc., of property in a contracting State or India. Sub-clause (i) seeks to amend sub-section (1) of the said section to substitute for the words and figures “property under section 5 or where an Adjudicating Authority has made an order confirming such attachment or confiscation of any property under section 8”, with the words, figures, brackets and letter “property under section 5 or for freezing under sub-section (1A) of section 17 or where an Adjudicating Authority has made an order relating to a property under section 8 or where a Special Court has made an order of confiscation relating to a property under sub-section (5) or sub section (6) of section 8”. Sub-clause (ii) proposes to amend sub-section (2) of the said section so as to substitute the words “attachment or confiscation”, with the words “attachment, seizure, freezing or confiscation”. Sub-clause (iii) seeks to insert a new sub-section after sub-section (2) of the said Act which provides that, if on closure of the criminal case or conclusion of trial in a criminal court outside India under the corresponding law of any other country, such court finds that the offence of money-laundering under the corresponding law of that country has been committed, the Adjudicating Authority shall, on receipt of an application from the Director for execution of confiscation under sub-section (2), order, after giving notice to the affected persons, that such property involved in money-laundering or which has been used for commission of the offence of money-laundering stand confiscated to the Central Government.

Clause 28.—This clause seeks to amend section 63 of Act relating to punishment for false information or failure to give information. It seeks to insert a new sub-section after sub-section (3) which provides that notwithstanding anything contained in clause (c) of sub-section (2), a person who intentionally disobeys any direction issued under section 50 shall also be liable to be proceeded against under section 174 of the Indian Penal Code.

Clause 29.—This clause seeks to substitute section 69 relating to recovery of fine or penalty. It provides that, if any fine or penalty imposed on any person under section 13 or section 63 is not paid within six months from the day of imposition of fine or penalty, the Director or any other officer authorised by him in this behalf may proceed to recover the amount from the said person in the same manner as prescribed in Schedule II of the Income-tax Act, 1961 for the recovery of arrears and he or any officer authorised by him in this behalf shall have all the powers of the Tax Recovery Officer mentioned in the said Schedule for the said purpose.

Clause 30.—This clause seeks to amend section 70 of the Act relating to offences by companies. It seeks to insert a new *Explanation* after the existing *Explanation* to clarify that a company may be prosecuted, notwithstanding whether the prosecution or conviction of any legal juridical person shall be contingent on the prosecution or conviction of any individual.

Clause 31.—This clause seeks to amend section 72 of the Act relating to continuation of proceedings in the event of death or insolvency. It seeks to substitute the words “High Court”, wherever they occur, with the words “Supreme Court”. It is a consequential change in the said section.

Clause 32.—This clause seeks to amend section 73 of the Act relating to power to make rules. It proposes to insert clauses (aa), (ee) and clause (pp), to omit clause (h) and to substitute clause (j) with new clause (j), (jj) and (jjj) specifying the matters in respect of which rules may be made.

Clause 33.—This clause seeks to amend the Schedule to the Act. Sub-clause (i) seeks to substitute Part A, with new Part so as to include the existing paragraphs 1 to 25 of Part B in Part A. Sub-clause (ii) seeks to omit the paragraphs 1 to 25 and sub-clause (iii) proposes to amend Part C to omit the entries relating to serial number (2).

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (1) of clause 5 of the Bill empowers the Central Government to make rules for provisional attachment of property.

2. Clause 9 of the Bill empowers the Central Government to make rules to provide the period within which the reporting entity to furnish information to Director relating to transaction, the nature and value of such transaction; to verify the identity of its client and the identity of beneficial owner of such clients. This clause further empowers the Central Government to notify exempting any reporting entity or class of entities from the obligation.

3. Clause 11 of the Bill empowers the Central Government to make rules to provide the period of interval at which the reporting entity or its designated director on the Board or any of its employees to send reports on the measures taken by it.

4. Clause 13 of the Bill empowers the Central Government to make rules, in consultation with the Reserve Bank of India, to provide the procedure and the manner of maintaining and furnishing information by reporting entity for the purpose of implementing the provisions of the Act.

6. Clause 16 of the Bill empowers the Central Government to make rules to provide the manner in which the officer shall forward a copy of the order alongwith the materials in his possession to the Adjudicating Authority .

7. The rules as may be made by the Central Government are required to be laid before the Parliament. The matters in respect of which rules may be made by the Central Government in accordance with the provisions of the Act are matters of procedure and administrative details and it is not practical to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

II

BILL NO. 136 OF 2011

A Bill further to amend the Constitution (Scheduled Tribes) Order, 1950 to modify the list of Scheduled Tribes in the State of Karnataka.

BE it enacted by Parliament in the Sixty-second Year of the Republic of India as follows:—

Short title.

1. This Act may be called the Constitution (Scheduled Tribes) Order (Second Amendment) Act, 2011.

Amendment
of Part VI of
Constitution
(Scheduled
Tribes)
Order, 1950.

2. In the Schedule to the Constitution (Scheduled Tribes) Order, 1950 in Part VI.—
Karnataka, in entry 37, after “Meda”, insert “, Medara.”

STATEMENT OF OBJECTS AND REASONS

Clause (25) of article 366 of the Constitution defines "Scheduled Tribes" which means such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under article 342 to be Scheduled Tribes for the purposes of this Constitution.

2. Article 342 of the Constitution provides that—

(1) the President may with respect to any State or Union territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State or Union territory, as the case may be.

(2) Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause (1) any tribe or tribal community or part of or group within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

3. In view of the above constitutional provisions, the first list of Scheduled Tribes in Karnataka was notified through the Constitution (Scheduled Tribes) Order, 1950. It has further been modified through the Scheduled Castes and Scheduled Tribes Orders, (Amendment) Act, 1956, the Scheduled Castes and Scheduled Tribes Lists (Modification) Order, 1956, the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976, the Constitution (Scheduled Tribes) Order (Second Amendment) Act, 1991 and the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 2002.

4. At present, there are 50 communities appearing in the list of Scheduled Tribes in State of Karnataka. To fulfil the long standing demand for considering the grant of Scheduled Tribes Status to the "Medara" community in the State of Karnataka, it is proposed, on the recommendation of the State of Karnataka, to amend the entry at Serial No. 37 occurring under Part VI, relating to Karnataka of the Schedule to the Constitution (Scheduled Tribes) Order, 1950 and insert the 'Medara' community after the community "Meda" Scheduled Tribes of Karnataka.

5. The Bill seeks to achieve the aforesaid objectives.

NEW DELHI;
The 16th December, 2011.

V. KISHORE CHANDRA DEO.

FINANCIAL MEMORANDUM

The Bill seeks to amend the Constitution (Scheduled Tribes) Order, 1950, by including the community “Medara” in the list of Scheduled Tribes in the State of Karnataka by amending the existing entry 37 of Part-VI of the said Order.

2. The amendments in the list of Scheduled Tribes of Karnataka will entail additional recurring and non-recurring expenditure from the Consolidated Fund of India on account of benefits likely to be provided to the persons belonging to the “Medara” community out of continuing schemes meant for the welfare of the Scheduled Tribes. The same will be accommodated within the Annual Plan and Non-Plan outlay of the Ministry.

III

BILL NO. 137 OF 2011

A Bill to provide for electronic delivery of public services by the Government to all persons to ensure transparency, efficiency, accountability, accessibility and reliability in delivery of such services and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Sixty-second Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Electronic Delivery of Services Act, 2011.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act and for different States and any reference in any such provision to the commencement of this Act shall, in relation to any State, be construed as a reference to coming into force of that provision in that State.

2. In this Act, unless the context otherwise requires, —

(a) “assisted access” means assistance to access electronic services;

Short title,
extent and
commencement.

Definitions.

(b) “Central Commission” means the Central Electronic Service Delivery Commission established under sub-section (1) of section 8;

(c) “Central Chief Commissioner” means the Chief Commissioner of the Central Commission appointed under sub-section (3) of section 9;

(d) “Central Commissioner” means the Commissioner of the Central Commission appointed under sub-section (3) of section 9;

(e) “competent authority” means the Head of every public authority or Department of the Central Government as notified by the Central Government or the public authority or Department of the State Government as notified by the State Government, from time to time and includes the Secretaries to the Central Government and the Secretaries to the State Government, and the Heads of Government Organisations and Government Bodies;

(f) “electronic mode” includes any method, process or application to deliver any service electronically;

(g) “electronic service delivery” means the delivery of public services or other services through electronic mode including the receipt of forms and applications, issue or grant of any licence, permit, certificate, sanction or approval and the receipt or payment of money;

(h) “Grievance Redressal Mechanism” means the mechanism for redressal of public grievances as notified by the Central Government and the State Government;

(i) “law” includes any Act of Parliament or of a State Legislature, Ordinances promulgated by the President or a Governor, as the case may be, regulations made by the President under article 240, President’s Act under sub-clause (a) of clause (1) of article 357 of the Constitution and includes rules, regulations, bye-laws and orders issued or made thereunder;

(j) “notification” means a notification published in the Official Gazette and the term “notify” shall be construed accordingly;

(k) “prescribed” means prescribed by rules made under this Act;

(l) “public authority” means any authority or body or institution of self-government established or constituted,—

(i) by or under the Constitution;

(ii) by or under any other law made by Parliament;

(iii) by or under any other law made by State Legislature;

(iv) by notification issued or order made by the appropriate Government,

and includes any—

(i) body owned, controlled or substantially financed;

(ii) non-Government organisation substantially financed,

directly or indirectly by funds provided by the appropriate Government;

(m) “public service” means any service or part thereof being provided to any person by the Central Government and the State Government or public authority either directly or through any service provider and includes the receipt of forms and applications, issue or grant of any licence, permit, certificate, sanction or approval and the receipt or payment of money by whatever name called in a particular manner;

(n) "service provider" means any individual, agency, company, partnership firm, sole proprietor firm or any such other body or agency which has been authorised by the Central Government or the State Government to offer services through electronic mode;

(o) "State Commission" means the State Electronic Service Delivery Commission established under sub-section (1) of section 15;

(p) "State Chief Commissioner" means the Chief Commissioner of the State Commission appointed under sub-section (3) of section 17;

(q) "State Commissioner" means the Commissioner of the State Commission appointed under sub-section (3) of section 17;

(r) words and expressions used but not defined in this Act and defined in the Information Technology Act, 2000 shall have the same meanings respectively assigned to them in that Act.

21 of 2000.

CHAPTER II

ELECTRONIC SERVICE DELIVERY

3. The Central Government, the State Government and public authorities shall deliver all public services by electronic mode within five years of the commencement of this Act except such services—

Delivery of public services through electronic mode.

(a) which cannot be delivered electronically;

(b) which can be delivered electronically but the Central Government or the State Government or public authority, as the case may be, notifies not to deliver electronically for the reasons to be specified in such notification:

Provided that the Central Government, the State Government and public authority shall consult the Central Commission or the State Commission, as the case may be, before notifying any electronic services under clause (b):

Provided further that such period of five years may be extended for a further period not exceeding three years by the Central Government or the State Government or public authority, in consultation with the Central Commission or the State Commission, for reasons to be notified.

4. (1) Every competent authority shall publish within one hundred and eighty days from the commencement of this Act, the list of all public services to be delivered by it through electronic mode.

Duty of competent authority.

(2) Every competent authority shall, after the publication of the list under sub-section (1), review the same and notify on the 1st day of January of every year—

(a) the date by which each such service shall be made available through electronic mode;

(b) the manner and quality of delivery of such services as may be prescribed;

(c) such other information as may be prescribed.

(3) The Central Government or the State Government or public authority may, while reviewing the list under sub-section (2), by notification, omit or add any public service in such list:

Provided that any omission in the list shall be subject to the approval of the Central Commission or the State Commission, as the case may be:

Provided further that the reason for such omission shall be notified.

(4) The competent authority, while introducing services in an electronic mode, shall—

(a) simplify and improve the existing process and forms relating to such services in such manner as may be prescribed; and

(b) provide assisted access to such services in such manner as may be prescribed.

Specification
of electronic
governance
standards.

5. Any Department in the Government of India may, from time to time, notify, in such manner as may be prescribed, electronic governance standards, being not inconsistent with electronic governance standards notified by the Central Government, as may be necessary for ensuring inter-operability, integration, harmonisation and security of electronic services:

Provided that a State Government may prescribe such standards which had not been notified by the Central Government and the standards so notified by the State Government shall remain in force till such standards are notified by the Central Government.

Notification
of Grievance
Redressal
Mechanism.

6. Every competent authority shall notify a Grievance Redressal Mechanism for the redressal of grievances under this Act, within such time and in such manner as may be prescribed.

Complaint in
respect of
non-
availability
of service in
electronic
mode.

7. (1) Any aggrieved person may file a complaint in prescribed manner to such authority as may be notified under the Grievance Redressal Mechanism notified under section 6 with respect to—

(a) non-availability of public services in an electronic mode as published by the competent authority under sub-section (2) of section 4;

(b) deficiency in delivery of the electronic service.

(2) The complaints filed under sub-section (1) shall be dealt with in such manner as may be prescribed.

CHAPTER III

THE CENTRAL ELECTRONIC SERVICE DELIVERY COMMISSION

Establishment
of Central
Electronic
Service
Delivery
Commission.

8. (1) With effect from such date as the Central Government may, by notification appoint, there shall be established, for the purposes of this Act, a Commission to be known as the Central Electronic Service Delivery Commission.

(2) The Central Commission shall consist of—

(a) the Central Chief Commissioner; and

(b) such number of Central Commissioners, not exceeding two, as may be deemed necessary.

(3) The head office of the Central Commission shall be at Delhi and the Central Commission may, with the previous approval of the Central Government, establish offices at other places in India.

Qualifications
for
appointment
of Central
Chief
Commissioner
and Central
Commissioners.

9. (1) The Central Chief Commissioner and Central Commissioners of the Central Commission shall be persons of eminence in public life who have special knowledge and not less than twenty-five years of professional experience in information technology, management, public administration or governance:

Provided that the Central Commissioner, at the time of his appointment, shall not be more than sixty-two years of age.

(2) The Central Chief Commissioner or Central Commissioners shall not be a Member of Parliament or Member of Legislature of any State or Union territory, or hold any other office of profit or connected with any political party or carrying on any business or pursuing any profession.

(3) The Central Chief Commissioner and Central Commissioners shall be appointed by the President of India on the recommendation of a committee consisting of—

(a) the Cabinet Secretary to the Government of India;

(b) a person of the rank of Secretary to the Government of India nominated by the Central Government;

(c) an expert of repute who has knowledge of, and experience in, information technology, public administration or governance to be nominated by the Central Government.

10. The general superintendence, direction and management of the affairs of the Central Commission shall vest in the Central Chief Commissioner who shall be assisted by Central Commissioners and may exercise all such powers and do all such acts and things which may be exercised or done by the Central Commission autonomously.

General superintendence, direction and control to vest in Central Chief Commissioner.

11. (1) The Central Chief Commissioner shall hold office for a term of five years from the date on which he enters upon his office or till he attains the age of sixty-five years, whichever is earlier, and shall not be eligible for reappointment.

Term of office and conditions of service.

(2) Every Central Commissioner shall hold office for a term of five years from the date on which he enters upon his office or till he attains the age of sixty-five years, whichever is earlier, and not be eligible for reappointment as such Central Commissioner:

Provided that where the Central Commissioner is appointed as the Central Chief Commissioner, his term of office shall not be more than five years in aggregate as the Central Commissioner and the Central Chief Commissioner.

(3) An officer of the Central Government or the State Government, on his selection as the Central Chief Commissioner or Central Commissioner, as the case may be, shall have to retire from service before joining as Central Chief Commissioner or Central Commissioner.

(4) The salaries and allowances payable to and other terms and conditions of service of the Central Chief Commissioner and Central Commissioner shall be such as may be prescribed:

Provided that the salaries, allowances and other conditions of service of the Central Chief Commissioner and Central Commissioner shall not be varied to their disadvantage after their appointment.

(5) In the event of the occurrence of a vacancy in the office of the Central Chief Commissioner by reason of his death, resignation or otherwise, the senior-most Central Commissioner shall act as the Central Chief Commissioner, until the date on which a new Central Chief Commissioner, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.

(6) When the Central Chief Commissioner is unable to discharge his functions owing to absence, illness or any other cause, the senior-most Central Commissioner shall discharge

the functions of the Central Chief Commissioner until the date on which the Central Chief Commissioner resumes the charge of his functions.

Resignation
and removal.

12. (1) The Central Chief Commissioner or Central Commissioner may, by notice in writing under his hand addressed to the Central Government, resign his office:

Provided that the said Central Chief Commissioner or Central Commissioner shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person, duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is earliest.

(2) The Central Chief Commissioner or Central Commissioner shall not be removed from his office except by an order by the Central Government on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the Supreme Court in which the Central Chief Commissioner or the Central Commissioner had been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

(3) The Central Government may, by rules, regulate the procedure for the investigation of misbehaviour or incapacity of the Central Chief Commissioner or Central Commissioner referred to in sub-section (2).

(4) Notwithstanding anything contained in sub-section (2), the Central Government may, by order, remove the Central Chief Commissioner or Central Commissioner from his office if the Central Chief Commissioner or Central Commissioner, as the case may be,—

(a) is, or at any time has been, adjudged as an insolvent; or

(b) has engaged at any time, during his term of office, in any paid employment;
or

(c) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a Central Chief Commissioner or Central Commissioner, as the case may be; or

(e) has so abused his position as to render his continuance in office prejudicial to the public interest; or

(f) has become physically or mentally incapable of acting as a Central Chief Commissioner or Central Commissioner, as the case may be.

(5) Notwithstanding anything contained in sub-section (4), no Central Commissioner or Central Chief Commissioner shall be removed from his office on the ground specified in clause (d) or clause (e) of that sub-section unless the Supreme Court, on a reference being made to it in this behalf by the Central Government, has, on an inquiry, held by it in accordance with such procedure as may be prescribed in this behalf by the Supreme Court, reported that the Central Commissioner or Central Chief Commissioner, ought on such ground or grounds to be removed.

Meetings.

13. The Central Commission shall meet at such times and places, and shall observe such rules of procedures in regard to the transaction of business at its meetings, as may be prescribed.

Vacancy, etc.,
not to
invalidate
proceedings
of Central
Commission.

14. No act or proceeding of the Central Commission shall be invalid merely by reason of—

(a) any vacancy in, or any defect in the constitution of, the Central Commission;
or

(b) any defect in the appointment of Central Chief Commissioner or Central Commissioner; or

(c) any irregularity in the procedure of the Central Commission not affecting the merits of the case.

CHAPTER IV

THE STATE ELECTRONIC SERVICE DELIVERY COMMISSION

15. (1) With effect from such date as the State Government may, by notification appoint, there shall be established, for the purposes of this Act, a Commission to be known as the(name of the State) Electronic Service Delivery Commission.

State
Electronic
Service
Delivery
Commission.

(2) The State Commission shall consist of—

(a) the State Chief Commissioner; and

(b) such number of State Commissioners, not exceeding two, as may be deemed necessary.

(3) The head office of the State Commission shall be at such place as the State Government may, by notification, specify and the State Commission may, with the previous approval of the State Government, establish offices at other places in State.

16. The general superintendence, direction and management of the affairs of the State Commission shall vest in the State Chief Commissioner who shall be assisted by the State Commissioners and may exercise all such powers and do all such acts and things which may be exercised or done by the State Commission autonomously.

General
superintendence,
direction and
control to
vest in
Central Chief
Commissioner.

17. (1) The State Chief Commissioner and the State Commissioners shall be appointed by the State Government from amongst the persons of eminence in public life who have special knowledge and not less than twenty-five years of professional experience in information technology, management, public administration or governance:

Qualifications
for
appointment
of Chief State
Commissioner
and State
Commissioners.

Provided that the State Commissioner, at the time of his appointment, shall not be more than sixty-two years of age.

(2) The State Chief Commissioner or State Commissioners shall not be a Member of Parliament or Member of the Legislature of any State or Union territory, as the case may be, or hold any other office of profit or connected with any political party or carrying on any business or pursuing any profession.

(3) The State Chief Commissioner and State Commissioners shall be appointed by the Governor of the State on the recommendation of a committee consisting of—

(a) Chief Secretary of the State;

(b) a person of the rank of Principal Secretary to the State Government nominated by the State Government;

(c) an expert of repute who has knowledge and experience in information technology, public administration or governance to be nominated by the State Government.

18. (1) The State Chief Commissioner shall hold office for a term of five years from the date on which he enters upon his office or till he attains the age of sixty-five years, whichever is earlier, and shall not be eligible for reappointment as such State Chief Commissioner.

Term of
office and
conditions of
service.

(2) Every State Commissioner shall hold office for a term of five years from the date on which he enters upon his office or till he attains the age of sixty-five years, whichever is earlier, and shall not be eligible for reappointment as such State Commissioner:

Provided that where the State Commissioner is appointed as the State Chief Commissioner, his term of office shall not be more than five years in aggregate as the State Commissioner and the State Chief Commissioner.

(3) An officer of the Central Government or the State Government, on his selection as the State Chief Commissioner or State Commissioner, as the case may be, shall have to retire from service before joining as State Chief Commissioner or State Commissioners.

(4) The salaries and allowances payable to, and the terms and conditions of service of the State Chief Commissioner and State Commissioners shall be such as may be prescribed by the State Government:

Provided that the salaries, allowances and other conditions of service of the State Chief Commissioner and State Commissioners shall not be varied to their disadvantage after their appointment.

(5) In the event of the occurrence of a vacancy in the office of the State Chief Commissioner by reason of his death, resignation or otherwise, the senior-most State Commissioner shall act as the State Chief Commissioner, until the date on which a new State Chief Commissioner, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.

(6) When the State Chief Commissioner is unable to discharge his functions owing to absence, illness or any other cause, the senior-most State Commissioner shall discharge the functions of the State Chief Commissioner until the date on which the State Chief Commissioner resumes the charge of his functions.

Resignation
and removal.

19. (1) The State Chief Commissioner or State Commissioner may, by notice in writing under his hand addressed to the State Government, resign his office:

Provided that the State Chief Commissioner or State Commissioner shall, unless he is permitted by the State Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office, or until the expiry of his term of office, whichever is earliest.

(2) The State Chief Commissioner or State Commissioner shall not be removed from his office except by an order by the State Government on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the High Court in which the State Chief Commissioner or the State Commissioner, as the case may be, had been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

(3) The State Government may, by rules, regulate the procedure for the investigation of misbehaviour or incapacity of the State Chief Commissioner or State Commissioner referred to in sub-section (2).

(4) Notwithstanding anything contained in sub-section (2), the State Government may, by order, remove the State Chief Commissioner or State Commissioner from his office if such State Chief Commissioner or State Commissioner, as the case may be,—

(a) is, or at any time has been, adjudged as an insolvent; or

(b) has engaged at any time, during his term of office, in any paid employment; or

(c) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as State Chief Commissioner or State Commissioner, as the case may be; or

(e) has so abused his position as to render his continuance in office prejudicial to the public interest; or

(f) has become physically or mentally incapable of acting as State Chief Commissioner or State Commissioner, as the case may be.

(5) Notwithstanding anything contained in sub-section (4), no State Chief Commissioner or State Commissioner, shall be removed from his office on the ground specified in clause (d) or clause (e) of that sub-section unless the High Court, on a reference being made to it in this behalf by the State Government, has, on an inquiry, held by it in accordance with such procedure as may be prescribed in this behalf by the High Court, reported that the State Chief Commissioner or State Commissioner, ought on such ground or grounds to be removed.

20. The State Commission shall meet at such times and places, and shall observe such rules of procedures in regard to the transaction of business at its meetings as may be prescribed. Meetings.

21. No act or proceeding of the State Commission shall be invalid merely by reason of— Vacancy, etc., not to invalidate proceedings of Commission.

(a) any vacancy in, or any defect in the constitution of, the State Commission; or

(b) any defect in the appointment of the State Chief Commissioner or State Commissioner; or

(c) any irregularity in the procedure of the State Commission not affecting the merits of the case.

22. No order of the Central Government or the State Government appointing any person as the Central Chief Commissioner or Central Commissioner or, as the case may be, State Chief Commissioner or State Commissioner, shall be called in question in any manner and no act or proceeding before the Central Commission or State Commission shall be called in question in any manner on the ground merely of any defect in the constitution thereof. Orders constituting Central Commission or State Commission to be final.

23. (1) The Central Government or the State Government, as the case may be, shall provide the Central Chief Commissioner and Central Commissioners or State Chief Commissioner or State Commissioners with such officers and employees as may be necessary for the efficient performance of their functions under this Act. Staff of Central Commission or State Commission.

(2) The salaries and allowances payable to and the terms and conditions of service of the officers and other employees appointed for such purpose shall be such as may be prescribed.

(3) The officers and employees of the Central Commission or the State Commission, as the case may be, shall discharge their functions under the general superintendence of the Central Chief Commissioner or the State Chief Commissioner, as the case may be.

CHAPTER V

FUNCTIONS OF THE CENTRAL COMMISSION AND STATE COMMISSION

Functions of
Central
Commission
or State
Commission.

24. (1) The Central Commission or the State Commission, as the case may be, shall monitor the implementation of this Act on a regular basis.

(2) Without prejudice to the provisions contained in sub-section (1), the functions of the Central Commission and State Commission shall, amongst other things, include the following, namely:—

(a) monitoring the publication of services to be delivered through electronic mode and adherence to the time schedule, manner of delivery and quality of service notified for delivery of public services by the Central Government or the State Government, as the case may be;

(b) monitoring the periodic progress made by the Central Government, the State Government and public authority, as the case may be, towards achieving the delivery of all services through electronic mode in accordance with the provisions of this Act;

(c) recommending the simplification of processes and forms relating to delivery of electronic services by the Central Government, the State Government and public authority, as the case may be;

(d) monitoring the effectiveness of feedback and Grievance Redressal Mechanisms established by the Central Government, the State Government and the public authority, as the case may be;

(e) monitoring the periodic progress made by the Central Government, the State Government and the public authority, as the case may be, towards compliance with the applicable electronic governance standards and make recommendations in respect thereof; and

(f) performing any other function as may be prescribed by the Central Government or the State Government, as the case may be.

Reporting.

25. (1) The Central Commission or the State Commission, as the case may be, shall, prepare, in such form and at such time every year, as may be prescribed, an annual report on the implementation of the provisions of this Act during the previous financial year and forward a copy thereof to the Central Government and the State Government.

(2) Every Ministry or Department of the Central Government and the State Government shall, in relation to the public authorities within their jurisdiction, collect and provide such information, as may be prescribed, to the Central Commission or the State Commission, as the case may be, as is required to prepare the report referred to in sub-section (1) and comply with the requirements concerning the furnishing of that information for the purpose of this section.

(3) The information referred to in sub-section (2), shall include,—

(a) till such time as all public services offered by the public authorities under their control have been made available through electronic mode, the details of compliance in respect of the provisions of section 3 and sub-section (2) of section 4;

(b) in respect of the year to which the report referred to in sub-section (1) relates,—

(i) the number of electronic service requests received and the total number of service requests in respect of that service made available through electronic mode;

(ii) the number of electronic service requests in response to which service was provided in accordance with the applicable quality of service and prescribed details of the remaining cases;

(iii) the number of grievances pertaining to the provision of electronic services received under the Grievance Redressal Mechanism and information related to such grievances and their disposal;

(iv) the steps taken by the competent authority to sustain and promote the delivery of services through electronic mode in conformity with the provisions of this Act;

(v) the steps taken by the competent authority to ensure compliance with the applicable electronic governance standards;

(vi) the steps taken by the competent authority to ensure the availability of assisted access;

(vii) details of the feedback received by the competent authority in respect of the implementation of various provisions of this Act and in respect of services made available through electronic mode, and the action taken by the competent authority in pursuance thereof;

(c) recommendations for further development, improvement, modernisation and integration of electronic services and the legal and policy interventions which may be required to improve electronic service delivery;

(d) any other information as the Central Commission or the State Commission, as the case may be, may require from time to time.

(4) The Central Government or the State Government, as the case may be, may, as soon as practicable after the end of each year, cause a copy of the report of the Central Commission or the State Commission, as the case may be, referred to in sub-section (1), to be laid before each House of Parliament or, as the case may be, before each House of the State Legislature, where there are two Houses, and where there is one House of the State Legislature, before that House.

(5) If it appears to the Central Commission or the State Commission, as the case may be, that the practice of a Ministry, Department or public authority in relation to the exercise of its functions under this Act does not conform with the provisions of this Act, it may direct the competent authority to take such steps which it considers necessary to be taken for promoting such conformity:

Provided that no such direction shall be issued by the Central Commission or the State Commission, as the case may be, without providing the Ministry, Department or public authority, a reasonable opportunity for taking corrective measures.

(6) The Ministry, Department or public authority, as the case may be, on finding that there exist circumstances which require a review of such directions, may apply to the Central Commission or the State Commission, for review of such directions of the Central Commission or the State Commission, as the case may be, and the Central Commission or the State Commission may, after review, modify or cancel the direction or issue a fresh direction.

CHAPTER VI

REPRESENTATION TO CENTRAL COMMISSION OR STATE COMMISSION

26. (1) Any person aggrieved by the order of the Grievance Redressal Mechanism on the complaint filed under clause (a) of sub-section (1) of section 7, may make a representation, Representation.

in such manner as may be prescribed, to the Central Commission or the State Commission, as the case may be.

(2) The Central Commission or the State Commission, as the case may be, while disposing of the representation made under sub-section (1), shall give reasonable opportunity of hearing to the competent authority and the appellant.

(3) The Central Commission or the State Commission, as the case may be, shall dispose of the representation in accordance with such procedure as may be prescribed.

Appeal against
order of
Commission.

27. (1) Any person aggrieved against an order of the Central Commission may file an appeal to the High Court of Delhi.

(2) Any person aggrieved against an order of the State Commission may file an appeal to the High Court of the State where such State Commission is located.

Procedure and
powers of
Central
Commission
or State
Commission.

28. (1) The Central Commission or State Commission shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules made thereunder, the Central Commission or State Commission shall have powers to regulate its own procedure including the place at which it shall hold its sittings. 5 of 1908.

(2) The Central Commission or State Commission, as the case may be, shall, while inquiring into any matter under this section, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely: — 5 of 1908.

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents or other electronic records;

(c) receiving evidence on affidavits;

(d) issuing commissions for the examination of witnesses or documents;

(e) issuing directions to the competent authority for promoting conformity to the provisions of this Act;

(f) imposing penalty for contravention of any of the provisions of this Act as per section 29;

(g) reviewing its decisions;

(h) dismissing an application for default or disposing it *ex parte*;

(i) any other matter which may be prescribed.

CHAPTER VII

PENALTIES

Penalty.

29. (1) Where a Competent Authority or any officer under it, while discharging duty relating to any provision of this Act, without any reasonable cause, contravenes any provision of this Act, or the directions issued by the Central Commission or the State Commission, then, the Central Commission or the State Commission, as the case may be, may, after providing it or him, as the case may be, the opportunity of being heard, impose upon it or him a penalty which may extend up to five thousand rupees.

(2) In case of wilful and persistent default of any of the provisions of this Act or the directions issued by the Central Commission or the State Commission, on the part of any competent authority or any officer under it, the penalty referred to in sub-section (1) may extend up to twenty thousand rupees.

30. All sums realised by way of penalties under this Act shall be credited to the Consolidated Fund of India.

Crediting sums realised by way of penalties to Consolidated Fund of India.

CHAPTER VIII

FINANCE, ACCOUNTS AND AUDIT

31. (1) The Central Government shall, after due appropriation made by Parliament by law in this behalf, pay to the Commission by way of grants such sums of money as the Central Government may think fit for being utilised for the purposes of this Act.

Grants by Central Government.

(2) The Central Commission may spend such sums of money as it thinks fit for performing the functions under this Act, and such sums shall be treated as expenditure payable out of the grants referred to in sub-section (1).

32. (1) The State Government shall, after due appropriation made by Legislature by law in this behalf, pay to the State Commission by way of grants such sums of money as the State Government may think fit for being utilised for the purposes of this Act.

Grants by State Governments.

(2) The State Commission may spend such sums of money as it thinks fit for performing the functions under this Act, and such sums shall be treated as expenditure payable out of the grants referred to in sub-section (1).

33. (1) The Central Commission shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

Accounts and audit of Central Commission.

(2) The accounts of the Central Commission shall be audited by the Comptroller and Auditor-General at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Central Commission to the Comptroller and Auditor-General.

(3) The Comptroller and Auditor-General and any person appointed by him in connection with the audit of the accounts of the Central Commission under this Act shall, have the same rights and privileges and the authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Central Commission.

(4) The accounts of the Commission as certified by the Comptroller and Auditor-General or any other person appointed by him in this behalf, together with the audit report thereon shall be forwarded annually to the Central Government by the Central Commission and the Central Government shall cause the audit report to be laid, as soon as may be after it is received, before each House of Parliament.

34. (1) The State Commission shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the State Government in consultation with the Comptroller and Auditor-General of India.

Accounts and audit of State Commission.

(2) The accounts of the State Commission shall be audited by the Comptroller and Auditor-General at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the State Commission to the Comptroller and Auditor-General.

(3) The Comptroller and Auditor-General and any person appointed by him in connection with the audit of the accounts of the State Commission under this Act shall have the same rights and privileges and the authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts,

connected vouchers and other documents and papers and to inspect any of the offices of the State Commission.

(4) The accounts of the State Commission as certified by the Comptroller and Auditor-General or any other person appointed by him in this behalf, together with the audit report thereon shall be forwarded annually to the State Government by the State Commission and the State Government shall cause the audit report to be laid, as soon as may be after it is received, before the State Legislature.

CHAPTER IX

MISCELLANEOUS

Act to have overriding effect.

35. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

Protection of action taken in good faith.

36. No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act or any rule made thereunder.

Directions by Central Government.

37. (1) Without prejudice to the foregoing provisions of this Act, the Central Commission shall, in exercise of its powers or the performance of its functions under this Act, be guided by such directions on questions of policy involving public interest, as may be given to it by the Central Government in writing from time to time.

(2) If any dispute arises between the Central Government and the Central Commission as to whether a question is or is not a question of policy involving public interest, the decision of the Central Government thereon shall be final.

Directions by State Government.

38. (1) Without prejudice to the foregoing provisions of this Act, the State Commission shall, in exercise of its powers or the performance of its functions under this Act, be guided by such directions on questions of policy, involving public interest, as may be given to it by the State Government in writing from time to time.

(2) If any dispute arises between the State Government and the State Commission as to whether a question is or is not a question of policy involving public interest, the decision of the State Government thereon shall be final.

Supersession of Central Commission.

39. (1) If at any time, the Central Government is of the opinion—

(a) that on account of circumstances beyond the control of the Central Commission, it is unable to discharge the functions or perform the duties imposed on it by or under the provisions of this Act; or

(b) that the Central Commission has persistently made default in complying with any direction given by the Central Government under this Act or in the discharge of the functions or performance of the duties imposed on it by or under the provisions of this Act and as a result of such default, the financial position of the Central Commission or the administration of the Commission has suffered; or

(c) that circumstances exist which render it necessary in the public interest so to do,

the Central Government, after consultation with the committee appointed under sub-section (3) of section 9 may, by notification and for reasons to be specified therein, supersede the Central Commission for such period, not exceeding six months, as may be specified in the notification:

Provided that before issuing any such notification, the Central Government shall give

a reasonable opportunity to the Central Commission to make representation against the proposed supersession and shall consider representation, if any, of the Commission.

(2) Upon the publication of a notification under sub-section (1) superseding the Central Commission,—

(a) the Central Chief Commissioner and Central Commissioners shall as from the date of supersession, vacate their offices as such;

(b) all the powers, functions and duties which may, by or under the provisions of this Act, be exercised or discharged by or on behalf of the Central Commission shall, until the Central Commission is reconstituted under sub-section (3), be exercised and discharged by the Central Government or such authority as the Central Government may specify in this behalf;

(c) all properties owned or controlled by the Central Commission shall, until the Central Commission is reconstituted under sub-section (3), vest in the Central Government.

(3) On or before the expiration of the period of supersession specified in the notification issued under sub-section (1), the Central Government shall reconstitute the Central Commission by a fresh appointment of its Central Chief Commissioner and Central Commissioners and in such case, any person who had vacated his office under clause (a) of sub-section (2) shall not be deemed to be disqualified for re-appointment.

(4) The Central Government shall cause a notification issued under sub-section (1) and a full report of any action taken under this section and the circumstances leading to such action to be laid before each House of Parliament at the earliest.

40. (1) If at any time, the State Government is of the opinion—

Supersession of
State
Commission.

(a) that on account of circumstances beyond the control of the State Commission, it is unable to discharge the functions or perform the duties imposed on it by or under the provisions of this Act; or

(b) that the State Commission has persistently made default in complying with any direction given by the State Government under this Act or in the discharge of the functions or performance of the duties imposed on it by or under the provisions of this Act and as a result of such default, the financial position of the State Commission or the administration of the Commission has suffered; or

(c) that circumstances exist which render it necessary in the public interest so to do,

the State Government, after consultation with the committee appointed under sub-section (3) of section 17, may by notification and for reasons to be specified therein, supersede the State Commission for such period, not exceeding six months, as may be specified in the notification:

Provided that before issuing any such notification, the State Government shall give a reasonable opportunity to the State Commission to make representation against the proposed supersession and shall consider representation, if any, of the Commission.

(2) Upon the publication of a notification under sub-section (1) superseding the State Commission,—

(a) the State Chief Commissioner and State Commissioners shall as from the date of supersession, vacate their offices as such;

(b) all the powers, functions and duties which may, by or under the provisions of this Act, be exercised or discharged by or on behalf of the State Commission shall, until the State Commission is reconstituted under sub-section (3), be exercised and

discharged by the State Government or such authority as the State Government may specify in this behalf;

(c) all properties owned or controlled by the State Commission shall, until the State Commission is reconstituted under sub-section (3), vest in the State Government.

(3) On or before the expiration of the period of supersession specified in the notification issued under sub-section (1), the State Government shall reconstitute the State Commission by a fresh appointment of its State Chief Commissioner and State Commissioners and in such case, any person who had vacated his office under clause (a) of sub-section (2) shall not be deemed to be disqualified for re-appointment.

(4) The State Government shall cause a notification issued under sub-section (1) and a full report of any action taken under this section and the circumstances leading to such action to be laid before each House of the State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House.

Members to
be public
servant.

41. The Central Chief Commissioner and Central Commissioners and officers and other employees of the Central Commission and the State Chief Commissioner and State Commissioners and officers and other employees of the State Commission shall be deemed, while acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code.

45 of 1860.

Power of
Central
Government
to make rules.

42. (1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the manner and quality of delivery of services under clause (b) of sub-section (2) of section 4;

(b) other information under clause (c) of sub-section (2) of section 4;

(c) the manner of simplification and improvement of existing process and forms relating to such services under clause (a) of sub-section (4) of section 4;

(d) the manner in which assisted access to electronic services shall be provided to specified categories of users under clause (b) of sub-section (4) of section 4;

(e) the manner notifying electronic governance standards for ensuring inter-operability, integration, harmonisation and security of electronic services under section 5;

(f) the time and the manner of notifying the Grievance Redressal Mechanism under section 6;

(g) the manner of filing complaint by the aggrieved person under sub-section (1) of section 7;

(h) the manner of dealing with complaints under sub-section (2) of section 7;

(i) the salary and allowances and other terms and conditions of service of Central Chief Commissioner and Central Commissioners under sub-section (4) of section 11;

(j) the procedure for the investigation of misbehaviour or incapacity of the Central Chief Commissioner or Central Commissioner under sub-section (3) of section 12;

(k) the time and places and the rules of procedure for the transaction of business of the Central Commission under section 13;

(l) salaries and allowances and other terms and conditions of service of staff of the Central Commission under sub-section (2) of section 23;

(m) any other function to be performed by the Central Commission under clause (f) of sub-section (2) of section 24;

(n) the form and time for preparation of the annual report of the Central Commission under sub-section (1) of section 25;

(o) the information to the Central Commission under sub-section (2) of section 25;

(p) details of the remaining cases under sub-clause (ii) of clause (b) of sub-section (3) of section 25;

(q) the manner of making representation before the Central Commission under sub-section (1) of section 26;

(r) the procedure to be followed while disposing the representation under sub-section (3) of section 26;

(s) any other matter under clause (i) of sub-section (2) of section 28;

(t) the form of preparation of the annual statement of accounts of the Central Commission under sub-section (1) of section 33.

43. Every rule made and every notification issued by the Central Government under this Act shall be laid, as soon as may be after it is made or issued, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or the notification or both Houses agree that the rule or notification should not be made, the rule or notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification.

Laying of rules.

44. (1) The State Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

Power of State Government to make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the manner and quality of delivery of services under clause (b) of sub-section (2) of section 4;

(b) other information under clause (c) of sub-section (2) of section 4;

(c) the manner of simplification and improvement of existing process and forms relating to such services under clause (a) of sub-section (4) of section 4;

(d) the manner in which assisted access to electronic services shall be provided to specified categories of users under clause (b) of sub-section (4) of section 4;

(e) the manner of notifying electronic governance standards for ensuring inter-operability, integration, harmonisation and security of electronic services under section 5;

(f) the time and the manner of notifying the Grievance Redressal Mechanism under section 6;

(g) the manner of filing complaint by the aggrieved person under sub-section (1) of section 7;

(h) the manner of dealing with complaints under sub-section (2) of section 7;

(i) the salary and allowances and other terms and conditions of service of State Chief Commissioner and State Commissioners under sub-section (4) of section 18;

(j) the procedure for the investigation of misbehaviour or incapacity of the State Chief Commissioner or State Commissioner under sub-section (3) of section 19;

(k) the time and places and the rules of procedure for the transaction of business of the State Commission under section 20;

(l) salaries and allowances and other terms and conditions of service of staff of the State Commission under sub-section (2) of section 23;

(m) any other function to be performed by the State Commission under clause (f) of sub-section (2) of section 24;

(n) the form and the time for preparation of the annual report of the State Commission under sub-section (1) of section 25;

(o) the information to the State Commission under sub-section (2) of section 25;

(p) details of the remaining cases under sub-clause (ii) of clause (b) of sub-section (3) of section 25;

(q) the manner of making representations before the State Commission under sub-section (1) of section 26;

(r) the procedure to be followed while disposing the representation under sub-section (3) of section 26;

(s) any other matter under clause (i) of sub-section (2) of section 28;

(t) the form of preparation of the annual statement of accounts of the State Commission under sub-section (1) of section 34.

Laying of rules.

45. Every notification or rule made under this Act by a State Government shall be laid, as soon as may be after it is notified, before each House of the State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House.

Power to remove difficulties.

46. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary or expedient for removal of the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date of the commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

STATEMENT OF OBJECTS AND REASONS

The National e-Governance Plan approved by the Government in May, 2006 envisages to make all Government services accessible to the common man in his locality, through common service delivery outlets and ensure efficiency, transparency and reliability of such services at affordable costs to realise the basic needs of the common man.

2. In order to realise this, the Central Government is creating a common core and support infrastructure consisting of State Wide Area Networks, State Data Centres, Common Services Centres and Electronic Service Delivery Gateways, besides evolving and laying down Standards and Policy Guidelines to ensure sharing of information and seamless interoperability of data and e-Governance applications. The National e-Governance Plan lays down policy guidelines and stipulates service delivery orientation and strategy for identified e-Governance projects in Mission Mode in various Ministries.

3. With the enactment of the Right to Information Act, 2005 an obligation has been placed on the Central Government and State Governments and all public authorities under them to provide information to citizens to ensure transparency and accountability in their functioning. The Information Technology Act, 2000 provides for legal recognition of electronic transactions for enabling citizens to electronically access information and public services efficiently and seamlessly.

4. Though significantly the ground has been covered under the National e-Governance Plan in terms of the provisioning of necessary infrastructure and creation of institutional or organisational structures, and to a lesser extent, in the delivery of services, it is felt that the pace of implementation in enabling electronic delivery of public services is not commensurate with citizens' aspirations and expectations. It is also felt that the most critical challenge is to speed up the process of enabling electronic delivery of public services to the citizens.

5. For promoting e-Governance in the country, the second Administrative Reforms Commission, in its Eleventh Report submitted in 2008, has recommended a clear road map with set of milestones to be outlined by Government of India with the ultimate objective of transforming the citizen-Government interaction at all levels to the e-Governance mode by 2020 through a legal framework, taking into consideration the mammoth dimension of the task, the levels of required coordination between the Union and State Governments and the diverse field situations in which it would be implemented.

6. To give effect to this recommendation of the Administrative Reforms Commission, and for resolving issues like resistance to change, systemic inertia, procedural hurdles, lack of transparency and legal impediments experienced in electronic delivery of services, it is proposed to enact a legislation which would mandate provisioning of all public services compulsorily through electronic means from a specified date.

7. Accordingly, it is proposed to provide for the following matters, namely:—

(i) within a period of five years from the date of coming into force of the Act, the Central Government, the State Governments and all public authorities under them shall deliver all public services by electronic mode except such services which cannot be delivered electronically, and the said period may be extended by a further period of three years to achieve the said object;

(ii) all concerned Government Departments shall, within one hundred and eighty days from the date of coming into force of the Act, publish a list of all public services to be delivered through electronic mode;

(iii) all concerned Government departments to review and verify—

(a) the date by which each such service shall be made available through electronic mode;

- (b) the manner and quality of delivery of such services;
- (c) any addition or omission in the list of services so notified;
- (iv) simplify and improve existing processes and forms relating to these services;
- (v) provide assisted access to electronic services;
- (vi) notify electronic governance standards to ensure inter-operability, integration, harmonisation and security of electronic services;
- (vii) all concerned Departments to notify Grievance Redressal Mechanisms for the redressal of grievances relating to electronic delivery of services;
- (viii) establishment of an oversight mechanism for implementation and monitoring of the Act in the form of the Central Electronic Service Delivery Commission at the Central Government level and the State Electronic Service Delivery Commission at the State Government level;
- (ix) to empower the Central Commission or the State Commission to issue directions to the concerned Ministries or Departments to ensure actions in conformity with the Act;
- (x) imposition of a penalty on defaulting officials for contravention of the provisions of this Act;
- (xi) empower the Central Government and the State Government to issue directions on questions of policy involving public interest to the Central Commission or the State Commission.

8. The Bill seeks to achieve the above objects.

NEW DELHI;
The 21st December, 2011.

KAPIL SIBAL.

Notes on clauses

Clause 1.— This clause of the Bill, *inter alia*, seeks to extend the provisions of the Bill to the whole of India except the State of Jammu and Kashmir commencement of the proposed EDS Legislation. It provides that it shall come into force on such date as the Central Government may appoint by notification in the Official Gazette and the Central Government may appoint different dates for different provisions of the proposed legislation and for different States.

Clause 2.— This clause defines the various expressions used in the Bill which *inter alia* include “assisted access”, “Central Commission”, “Central Chief Commissioner”, “Central Commissioner”, “competent authority”, “electronic mode”, “electronic service delivery”, “Grievance redressal mechanism”, “public authority”, “public service”, “service provider”, “State Commission”, “State Chief Commissioner”, “State Commissioner” etc.

Clause 3.— This clause of the Bill seeks to provide for the delivery of all public services through electronic mode by the Central Government, the State Government and public authorities within five years of the commencement of the proposed legislation except certain services specified therein. However, before notifying any electronic services, the Central Government or the State Government or public authority shall consult the Central Commission or the State Commission.

It further provides that the Central Government or the State Government or public authority in consultation with the Central or the State Commission may extend such period of five years by a further period not exceeding three years.

Clause 4.— This clause of the Bill seeks to provide for the duty of competent authority which, *inter alia*, include publishing within one hundred and eighty days from the commencement of the proposed legislation, the list of all public services which are to be delivered by it through electronic mode, to review and notify the list of all public services which are to be delivered through electronic mode, the date by which each such service shall be made available through electronic mode, the manner and quality of delivery of such services, omission or addition of any public service in such list, the simplification and improvement of the existing process and forms relating to such services and to provide assisted access to such services.

Clause 5.— This clause of the Bill seeks to provide for specification of electronic governance standards which are not inconsistent with electronic governance standards notified by the Central Government in the Ministry of Communications and Information Technology (Department of Information Technology), for ensuring inter-operability, integration, harmonization and security of electronic services. This clause also empowers the State Governments to prescribe standards which are not notified by the Central Government and such standards shall be valid till the Standards are notified by the Central Government.

Clause 6.— This clause of the Bill seeks to provide for notification of Grievance Redressal Mechanism by the competent authority for the redressal of grievances within such time and in such manner as may be provided by rules.

Clause 7.— This clause of the Bills seeks to provide for filing of complaint by any aggrieved person in respect of non-availability of service in electronic mode and deficiency in delivery of electronic service in such manner as may be provided by rules.

Clause 8.— This clause of the Bill seeks to provide for the establishment of Central Electronic Service Delivery Commission by the Central Government which shall consist of the Central Chief Commissioner and such number of Central Commissioners not exceeding two and that the Head Office of the Central Commission shall be at Delhi. It also empowers the Central Commission to establish offices at other places in India with the previous approval of the Central Government.

Clause 9.— This clause of the Bill seeks to lay down the qualifications for appointment of Central Chief Commissioner and Central Commissioners of the Central Commission who shall be persons of eminence in public life who have special knowledge of and not less than twenty-five years of professional experience in, information technology, management, public administration or governance. The age of Central Commissioner at the time of his appointment shall not be more than sixty two years of age. The Central Chief Commissioner or Central Commissioners shall not be a Member of Parliament or Member of Legislature of any State or Union territory, or hold any other office of profit or connected with any political party or carrying on any business or pursuing any profession.

It further provides that the Central Chief Commissioner and Central Commissioners shall be appointed by the President of India on the recommendation of a committee consisting of the Cabinet Secretary to the Government of India, a person of the rank of Secretary to the Government of India nominated by the Central Government, an expert of repute who has knowledge of, and experience in information technology, public administration or governance to be nominated by the Central Government.

Clause 10.— This clause of the Bill seeks to provide for vesting in the Central Chief Commissioner, the general superintendence, direction and management of the affairs of the Central Commission and that he shall be assisted by Central Commissioners to exercise all such powers and do all such acts and things which may be exercised or done by the Central Commission autonomously.

Clause 11.— This clause of the Bill seeks to lay down conditions of service of the Central Chief Commissioner and Central Commissioners, their period of office, salaries and allowances payable and other terms and conditions of service. Sub-clause (2) thereof provides that the Central Chief Commissioner shall hold office for a term of five years from the date on which he enters upon his office or till he attains the age of sixty-five years, whichever is earlier, and shall not be eligible for reappointment. Every Central Commissioner shall hold office for a term of five years from the date on which he enters upon his office or till he attains the age of sixty-five years, whichever is earlier, and not be eligible for reappointment as such Central Commissioner. However, where the Central Commissioner is appointed as the Central Chief Commissioner, his term of office shall not be more than five years in aggregate as the Central Commissioner and the Central Chief Commissioner.

Sub-clause (3) thereof provides that where an officer of the Central Government or the State Government is selected as the Central Chief Commissioner or Central Commissioner, as the case may be, he shall have to retire from service before joining as Central Chief Commissioner or Central Commissioner.

Sub-clause (4) thereof provides for salaries and allowances payable to and other term and condition of service of the Central Chief Commissioner or Central Commissioners and that the same shall not be varied to their disadvantages.

Sub-clause (5) of this clause provides that in the event of the occurrence of a vacancy in the office of the Central Chief Commissioner by reason of his death, resignation or otherwise, the senior-most Central Commissioner shall act as the Central Chief Commissioner, until the date on which a new Central Chief Commissioner, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.

Sub-clause (6) of this clause provides that whenever the Central Chief Commissioner is unable to discharge his functions owing to absence, illness or any other cause, the senior-most Central Commissioner shall discharge the functions of the Central Chief Commissioner until the date on which the Central Chief Commissioner resumes the charge of his functions.

Clause 12.— This clause of the Bill seeks to provide for the resignation and removal of the Central Chief Commissioner or Central Commissioner. The Central Chief Commissioner or Central Commissioner may by notice in writing under his hand addressed to the Central

Government, resign his office. Sub-clause (2) thereof provide that the Central Chief Commissioner or Central Commissioner shall not be removed from his office except by an order by the Central Government on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the Supreme Court in which the Central Chief Commissioner or the Central Commissioner had been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

Sub-clause (3) thereof empowers the Central Government to make rules to regular procedure for investigation of misbehaviour or in capacity.

Sub-clause (4) of this clause provides the circumstances under which the Central Chief Commissioner or the Central Commissioner may be removed. Where the Central Chief Commissioner or the Central Commissioner is, or at any time has been, adjudged as an insolvent or has engaged at any time, during his term of office, in any paid employment or has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude or has acquired such financial or other interest as is likely to affect prejudicially his functions as a Central Chief Commissioner or Central Commissioner, as the case may be or due to abuse of office rendering his continuance in office prejudicial to the public interest; or due to physical or mental disability.

Sub-clause (5) of this clause provides for reference to the Supreme Court by the Central Government in some circumstances for the removal of Central Commissioner or Central Chief Commissioner.

Clause 13.— This clause provides for meeting of the Central Commission at such times and places and for observing such rules or procedures in regard to the transaction of business at its meetings.

Clause 14.— This clause provides that any vacancy in, or any defect in the constitution of the Central Commission or any defect in the appointment of Central Chief Commissioner or Central Commissioner or any irregularity in the procedure of the Central Commission not affecting the merits of the case shall not invalidate any act or proceeding of the Central Commission.

Clause 15.— This clause provides for the establishment of a State Commission consisting of the State Chief Commissioner and such number of State Commissioners not exceeding two and that the head office shall be at such place as the State Government may by notification specify and the State Commission with the previous approval of the State Government establish offices at other places in the State.

Clause 16.— This clause provides for vesting in the State Chief Commissioner the general superintendence, direction and management of the affairs of the State Commission and that he shall be assisted by State Commissioners to exercise all such powers and do all such acts and things which may be exercised or done by the State Commission autonomously.

Clause 17.— This clause lays down the qualifications for appointment of State Chief Commissioner and State Commissioners of the State Commission who shall be persons of eminence in public life who have special knowledge of and not less than twenty-five years of professional experience in information technology, management, public administration or governance. The age of State Commissioner at the time of his appointment shall not be more than sixty two years of age. The State Chief Commissioner or the State Commissioners shall not be a Member of Parliament or Member of the Legislature of any State or Union territory, or hold any other office of profit or connected with any political party or carrying on any business or pursuing any profession. The State Chief Commissioner and the State Commissioners shall be appointed by the Governor of the State on the recommendation of a committee consisting of the Chief Secretary of the State, a person of the rank of Principal Secretary to the State Government nominated by the State Government, an expert of repute who has knowledge and experience in information technology, public administration or governance to be nominated by the State Government.

Clause 18.— This clause of the Bill seeks to lay down the conditions of service of the State Chief Commissioner and State Commissioners, their period of office, salaries and allowances payable and other terms and conditions of service. Sub-clause (2) thereof State

Chief Commissioner shall hold office for a term of five years from the date on which he enters upon his office or till he attains the age of sixty-five years, whichever is earlier, and shall not be eligible for reappointment. Every State Commissioner shall hold office for a term of five years from the date on which he enters upon his office or till he attains the age of sixty-five years, whichever is earlier, and not be eligible for reappointment as such State Commissioner. Where the State Commissioner is appointed as the State Chief Commissioner, his term of office shall not be more than five years in aggregate as the State Commissioner and the State Chief Commissioner.

This clause also provides that where an officer of the Central Government or the State Government is selected as the State Chief Commissioner or State Commissioner, as the case may be, he shall have to retire from service before joining as State Chief Commissioner or State Commissioner.

Sub-clause (4) thereof provides for salaries and allowances and other terms and condition of service of the State Chief Commissioner and State Commissioner.

Sub-clause (5) of this clause provides that in the event of the occurrence of a vacancy in the office of the State Chief Commissioner by reason of his death, resignation or otherwise, the senior-most State Commissioner shall act as the State Chief Commissioner, until the date on which a new State Chief Commissioner, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.

Sub-clause (6) of this clause provides that whenever the State Chief Commissioner is unable to discharge his functions owing to absence, illness or any other cause, the senior-most State Commissioner shall discharge the functions of the State Chief Commissioner until the date on which the State Chief Commissioner resumes the charge of his functions.

Clause 19.— This clause of the Bill seeks to provide for the resignation and removal of the State Chief Commissioner or State Commissioner. The State Chief Commissioner or State Commissioner may by notice in writing under his hand addressed to the State Government, resign his office. The State Chief Commissioner or State Commissioner shall be removed from his office by an order by the State Government on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the High Court in which the State Chief Commissioner or the State Commissioner had been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

Sub-clause (4) of this clause provides the circumstances under which the State Chief Commissioner or State Commissioner may be removed. Where the State Chief Commissioner or State Commissioner is, or at any time has been, adjudged as an insolvent or has engaged at any time, during his term of office, in any paid employment or has been convicted of an offence which, in the opinion of the State Government, involves moral turpitude or has acquired such financial or other interest as is likely to affect prejudicially his functions as State Chief Commissioner or State Commissioner, as the case may be or due to abuse of office rendering his continuance in office prejudicial to the public interest; or due to physical or mental disability.

Sub-clause (5) of this clause provides for reference to the High Court by the State Government in some circumstances for the removal of the State Chief Commissioner or the State Commissioner.

Clause 20.— This clause of the Bill seeks to provide for meeting of the State Commission at such times and places and for observing such rules or procedures in regard to the transaction of business at its meetings.

Clause 21.— This clause provides that any vacancy in, or any defect in the constitution of the State Commission or any defect in the appointment of State Chief Commissioner or State Commissioner or any irregularity in the procedure of the State Commission not affecting the merits of the case shall not invalidate any act or proceeding of the State Commission.

Clause 22.—This clause of the Bill seeks to provide that no order of the Central Government or the State Government appointing any person as the Central Chief Commissioner or Central Commissioner or State Chief Commissioner or State Commissioner, shall be called in question in any manner and no act or proceeding before the Central Commission or State Commission shall be called in question in any manner on the ground merely of any defect in the constitution thereof.

Clause 23.—This clause of the Bill seeks to provide that the Central Government or the State Government, as the case may be, shall provide the Central Chief Commissioner and Central Commissioners or State Chief Commissioner or State Commissioner with such officers and employees as may be necessary for the efficient performance of their functions under the proposed legislation, the salaries and allowances payable, the terms and conditions of service of the officers and other employees appointed for such purpose and who are subject to the general superintendence of the Central Chief Commissioner or the State Chief Commissioner, as the case may be.

Clause 24.—This clause of the Bill seeks to provide the functions of the Central Commission or the State Commission which *inter alia* include monitoring the publication of services to be delivered through electronic mode and adherence to the time schedule, manner of delivery and quality of service notified for delivery of public services by the Central Government or the State Government as the case may be, monitoring the periodic progress made by the Central Government, the State Government and public authority as the case may be, towards achieving the delivery of all services through electronic mode in accordance with the provisions of this proposed legislation, recommending the simplification of processes and forms relating to delivery of electronic services by the Central Government, the State Government and public authority as the case may be, monitoring the effectiveness of established feedback and Grievance Redressal Mechanisms, monitoring the periodic progress made by the Central Government, the State Government and the public authority as the case may be, towards compliance with the applicable electronic governance standards and make recommendations in respect thereof.

Clause 25.—This clause provides for the preparation of an annual report by the Central Commission or the State Commission, as the case may be, on the implementation of the provisions of the proposed legislation containing *inter alia* the plan of action to make available all public services through electronic mode, the number of electronic service requests received and the total number of service requests in respect of that service made available through electronic mode, the number of electronic service requests in response to which service was provided in accordance with the applicable quality of service and prescribed details of the remaining cases, the number of grievances pertaining to the provision of electronic services received under the Grievance Redressal Mechanism and information related to such grievances and their disposal, the steps taken by the competent authority to sustain and promote the delivery of services through electronic mode in conformity with the provisions of the proposed legislation, the steps taken by the competent authority to ensure compliance with the applicable electronic governance standards, the steps taken by the competent authority to ensure the availability of assisted access etc.

Sub-clause (4) of this clause seeks to provide that at the end of each year the Central Government or the State Government shall cause copy of the report of the Central Commission or State Commission, as the case may be, before each House of Parliament or each House of the State Legislature, as the case may be.

Clause 26.—This clause provides for the representation by any person aggrieved by the order of the Grievance Redressal Mechanism to the Central or State Commission as the case may be.

Clause 27.—This clause of the Bill seeks to provide for appeal against the order of the Central Commissioner to the High Court of Delhi.

Sub-clause (2) of this clause provides that an appeal against the order of the State Commission shall be to the High Court of the State in which such State Commission is located.

Clause 28.—This clause provides that the Central Commission or State Commissions are not bound by the procedure laid down by the Code of Civil Procedure, 1908 but by the principles of natural justice and shall have same powers as are vested in a civil court while enquiring into any matter.

Clause 29.—This clause provides for empowering the Central Commission or the State Commission to impose penalty on a competent authority or any officer under it for contravention of any provisions of the proposed legislation which may extend up to five thousand rupees. In case of wilful and persistent default the penalty may extend up to twenty thousand rupees.

Clause 30.—This clause provides for crediting any sums realized by way of penalties to the Consolidated Fund of India.

Clause 31.—This clause provides for payment of grants to the Central Commission by the Central Government after due appropriation made by Parliament.

Clause 32.—This clause provides for payment of grants to the State Commission by the State Government after due appropriation made by Legislature.

Clause 33.—This clause provides for maintaining the accounts and other relevant records and annual statement of accounts by the Central Commission. It further provides that accounts of the Central Commission shall be audited by the Comptroller and Auditor General of India. It also provides that the accounts of Central Commission together with the Audit Report thereon shall be forwarded annually to the Central Government and the Central Government shall lay the same before each House of Parliament.

Clause 34.—This clause provides for maintaining the accounts and other relevant records and annual statement of accounts by the State Commission. It further provides that accounts of the State Commission shall be audited by the Comptroller and Auditor General of India. It also provides that the accounts of State Commission as certified by the Comptroller and Auditor General or any other person appointed by him in this behalf together with the Audit Report thereon shall be forwarded annually to the State Government and the State Government shall lay the same before the State Legislature.

Clause 35.—This clause seeks to provide that the provisions of the proposed legislation shall have overriding effect.

Clause 36.—This clause provides for protection of any person from legal proceedings etc., for the action taken in good faith.

Clause 37.—This clause seeks to empower the Central Government to issue directions on questions of policy for guiding the Central Commission from time to time.

Clause 38.—This clause seeks to empower the State Government to issue directions on questions of policy for guiding the State Commission from time to time.

Clause 39.—This clause seeks to empower the Central Government to supersede the Central Commission if it is of the opinion that the Central Commission is unable to discharge the functions or perform the duties imposed on it. However, the Central Government shall give a reasonable opportunity to the Central Commission to make representations against the proposed supersession. However, the Central Government shall cause a notification issued and a full report of any action taken and the circumstances leading to such action to be laid before each House of Parliament at the earliest.

Clause 40.—This clause seeks to empower the State Government to supersede the State Commission if it is of the opinion that the State Commission is unable to discharge the functions or perform the duties imposed on it. However, the State Government shall give a

reasonable opportunity to the State Commission to make representations against the proposed supersession. However, the State Government shall cause a notification issued and a full report of any action taken and the circumstances leading to such action to be laid before each House of Parliament at the earliest.

Clause 41.—This clause provides that Central Chief Commissioner and Central Commissioners and officers and other employees of the Central Commission and the State Chief Commissioner and State Commissioners and officers and other employees of the State Commission shall be public servants within the meaning of section 21 of the Indian Penal Code.

Clause 42.—This clause seeks to empower the Central Government to make rules for carrying out the provisions of the proposed legislation. Sub-clause (2) of the said clause enumerates the various matters in respect of which such rules may be made.

Clause 43.—This clause provides that every rule made and every notification issued under the proposed legislation shall be laid before each House of Parliament.

Clause 44.—This clause seeks to empower the State Government to make rules for carrying out the provisions of the proposed legislation. Sub-clause (2) of the said clause enumerates the various matters in respect of which such rules may be made.

Clause 45.—This clause provides that every rule made and every notification issued under the proposed legislation shall be laid before each House of State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House.

Clause 46.—This clause relates to the power of the Central Government to remove difficulties. In case any difficulty arises in giving effect to the provisions of the proposed legislation, the Central Government may make such provisions as may be necessary in removing the difficulties by order published in the Official Gazette. However, no such order shall be made under this clause after the expiry of a period of two years from the commencement of the proposed legislation and every such order shall also be required to be laid before each House of Parliament.

FINANCIAL MEMORANDUM

Sub-clause (1) of clause 8 of the Bill provides for the establishment of the Central Electronic Service Delivery Commission.

Sub-clause (4) of Clause 11 of the Bill provides for salaries, allowances and other terms and conditions of service of the Central Chief Commissioner or Central Commissioners.

Sub-clause (1) of clause 15 of the Bill provides for establishment of the State Electronic Service Delivery Commission.

Sub-clause (4) of clause 18 provides for salaries, allowances and other terms and conditions of service of the State Chief Commissioner or State Commissioners.

Sub-clause (2) of Clause 23 of the Bill provides for salaries and allowances payable to and the terms and conditions of service of the officers and other employees of the Central Commission and the State Commission.

Clause 30 of the Bill provides that all sums realized by way of penalties under the proposed legislation shall be credited to the Consolidated Fund of India.

Clause 31 of the Bill provides that the Central Government shall, after due appropriation made by Parliament by law, pay to the Central Commission by way of grants such sums of money as the Central Government may think fit for being utilized for the purposes of the proposed legislation and the Central Commission may spend such sums of money as it thinks fit for performing the functions under the proposed legislation out of the grants received. The annual expenditure for the operations of the Commission will be of the order of Rs 4 crores which can initially be met from within the outlay available with the Department of Information Technology. No additional funding is being sought.

Clause 32 of the Bill provides that State Government shall, after due appropriation made by the Legislature by law, pay to the State Commission by way of grants such sums of money as the State Government may think fit for being utilized for the purposes of the proposed legislation and the State Commission may spend such sums of money as it thinks fit for performing the functions under the proposed legislation out of the grants received.

The Bill if enacted, is not likely to involve any other recurring or non-recurring expenditure.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 42 of the Bill empowers the Central Government to make rules for the purpose of carrying out the provisions of the proposed legislation. Sub-clause (2) of said clause specifies the various matters in respect of which the rules may be made. These matters *inter alia*, relate to the manner and quality of delivery of services, the manner in which assisted access to electronic services shall be provided to specified categories of users, the framing of electronic governance standards for ensuring interoperability, integration, harmonisation and security under section 5, the manner of notifying the Grievance Redressal Mechanism under section 6, the manner of filing the complaint by the aggrieved person under sub-section (1) of section 7, the manner of processing of complaints under sub-section (2) of section 7, salary, allowances and other terms and conditions of service of Central Chief Commissioner, Central Commissioners, under sub section (4) of section 11, regulation of the procedure for the investigation of misbehaviour or incapacity of the Central Chief Commissioner or Central Commissioner under sub-section (3) of section 12, salaries allowances and other terms and conditions of service of staff of the Central Commission, the form of preparation of the annual report of the Central Commission, the manner of filing of representations before the Central Commission, the procedure to be followed while disposing the representation, the form of preparation of the annual statement of accounts of the Central Commission.

2. Clause 44 of the Bill empowers the State Government to make rules to carry out the provisions of the proposed legislation. Sub-clause(2) of said clause specifies the various matters in respect of which the rules may be made. These matters *inter alia*, relate to the manner and quality of delivery of services, the manner in which assisted access to electronic services shall be provided to specified categories of users, the framing of electronic governance standards for ensuring interoperability, integration, harmonisation and security under section 5, the manner of notifying the Grievance Redressal Mechanism under section 6, the manner of filing the complaint by the aggrieved person under sub-section (1) of section 7, the manner of processing of complaints under sub-section (2) of section 7, salary, allowances and other terms and conditions of service of State Chief Commissioner, State Commissioners, under sub section (4) of section 18, regulation of the procedure for the investigation of misbehaviour or incapacity of the State Chief Commissioner or State Commissioner under sub-section (3) of section 19, salaries allowances and other terms and conditions of service of staff of the State Commission, the form of preparation of the annual report of the State Commission, the manner of filing of representations before the State Commission, the procedure to be followed while disposing the representation, the form of preparation of the annual statement of accounts of the State Commission.

3. The rules made and notification issued by the Central Government under the proposed legislation shall be required to be laid before each House of Parliament and in case of the rules made and notification issued by the State Government, before each House of the State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House.

4. The matters in respect of which rules may be made under the proposed legislation are matters of procedure or administrative details and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

T. K. VISWANATHAN,
Secretary-General.